

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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HONORABLE FERNANDO M. OLGUIN, DISTRICT JUDGE PRESIDING

AMANDA HILL,)
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Plaintiff,)
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)
)
vs.) No. CV 19-00163-FMO
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)
QUICKEN LOANS, INC.,)
)
)
Defendants.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EVIDENTIARY HEARING

LOS ANGELES, CALIFORNIA

MONDAY, DECEMBER 16, 2019

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PAGE

DEFENSE'S CASE..... 7

DEFENSE'S WITNESSES: DIRECT CROSS REDIRECT RECROSS

RICH, BEN	--	--	--	--
BY JEFFREY MORGANROTH	7	--	50	--
(FURTHER)	--	--	55	--
BY FRANK HEDIN	--	37	--	54
SMITH, LARRY	--	--	--	--
BY WILLIAM TAYMAN	58	--	--	--

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PLAINTIFF'S

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1 LOS ANGELES, CALIFORNIA; MONDAY, DECEMBER 16, 2019

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3 (COURT IN SESSION AT 2:03 P.M.)

4 COURTROOM DEPUTY: Calling item number one,
5 CV 19-00163-FMO: Amanda Hill v. Quicken Loans.

6 Counsel, please state your appearance for the
7 record.

8 MR. KAZEROUNIAN: Good afternoon. Seyed Abbas
9 Kazerounian for the plaintiff.

10 MR. HEDIN: Good afternoon, Your Honor.
11 Frank Hedin for the plaintiff.

12 MR. HALL: And David Hall also for the plaintiff.
13 Thank you.

14 THE COURT: Okay.

15 MR. MORGANROTH: Good afternoon, Your Honor.
16 Jeffrey Morgan on behalf of the defendant,
17 Quicken Loans.

18 MR. TAYMAN: Good afternoon, Your Honor.
19 Kyle Tayman on behalf of defendant, Quicken Loans.

20 MS. CUNNINGHAM: Good afternoon. I'm
21 Nancy Cunningham. I will be assisting the attorneys that are
22 at the hearing today.

23 THE COURT: Okay. So we're here for an evidentiary
24 hearing. And is everyone ready to proceed at this time?

25 MR. MORGANROTH: Yes, Your Honor.

1 THE COURT: Okay. So, defendants, since it is your
2 motion, I will start with you. Do you want -- unless you
3 worked something out, do you want all the witnesses excluded?
4 That is my practice.

5 MR. MORGANROTH: Yes, both sides decided to have
6 all witnesses excluded.

7 THE COURT: Okay. So why don't you go ahead and
8 call your first witness then.

9 MR. MORGANROTH: Yes, Your Honor. We would call
10 Ben Rich, our first witness.

11 **DEFENSE'S WITNESS, BEN RICH, SWORN.**

12 MS. CUNNINGHAM: May we activate the screen at this
13 point?

14 THE COURT: Not till you call an exhibit.

15 Then when you're done with the exhibits, I want to
16 them taken off the screen, okay.

17 MS. CUNNINGHAM: Okay.

18 THE COURT: I don't like exhibits to linger there.
19 Okay. Thank you.

20 **DIRECT EXAMINATION**

21 BY MR. MORGANROTH:

22 Q Mr. Rich, can you please state your full name for the
23 record.

24 A Yes, my name is Ben Rich, B-E-N; last name Rich,
25 R-I-C-H.

1 Q Are you currently employed?

2 A Yes.

3 Q By whom?

4 A LMB Mortgage Services.

5 Q For simplicity, is it okay if I refer to
6 LMB Mortgage Services as LMB?

7 A Yes.

8 Q All right. What is your job position or title for LMB?

9 A My title is senior vice president of product and sales.

10 Q And what are your duties and responsibilities in that
11 respect?

12 A I'm responsible for the construction, maintenance,
13 optimization experience of the website. I'm also responsible
14 for acquiring and managing our mortgage lenders or clients.

15 Q And can you describe the nature of LMB's business?

16 A Yeah, LMB is a free online matching service. So we'll
17 advertise primarily on the Internet about refinancing for the
18 most part. Consumers then go to our website. They'll put in
19 information, and then we will match them with our mortgage
20 claims.

21 Q And how long have you been employed by LMB?

22 A About 12 years.

23 Q How long have you held a position as senior vice
24 president for products and sales?

25 A About three years.

1 Q Is there a relationship between LMB and
2 Quicken Loans?

3 A Yes.

4 Q What is the relationship?

5 A About three years ago, Rock Holdings, Inc. RHI, acquired
6 LMB -- and that's also the same parent company as Quicken
7 Loans.

8 Q Is Quicken Loans also a client of LMB's?

9 A Yes.

10 Q And in what respect?

11 A They're one of the clients that will match consumers
12 too.

13 Q And how many mortgage lenders serve as a client of LMB
14 at any given time?

15 A About 50.

16 Q Now, Mr. Rich, I'd like to ask you some questions
17 regarding how the LMB's matching services work on a high
18 level, not technical details.

19 What are the different ways that a consumer would
20 get to LMB who was looking for a mortgage?

21 A There are two. The first is the -- a direct -- what we
22 call the direct method -- and that's where a consumer will
23 interact with an ad that LowerMyBills places -- drive them to
24 our website, and then we'll use that matching engine
25 technology -- that algorithm to match the consumer to our

1 mortgage clients. And then the second method -- the indirect
2 method is where we'll have third party or partners that will
3 do the advertising in the website, and then they'll engage
4 our matching engine to make the connection between the
5 consumer and our mortgage clients.

6 Q Have you heard of a website lmb.YourVASurvey.info?

7 A Yes.

8 Q And what is that?

9 A That's a -- a third-party website that we partner with
10 owned by SuitedConnector.

11 Q And just for simplicity, I'll refer to it as
12 YourVASurvey; is that okay?

13 A Yes.

14 Q And I see that VA is in the title. Is there any
15 relationship to that website and veterans?

16 A The purpose of that website is to communicate to
17 veterans about refi'ing their mortgage.

18 Q How does YourVASurvey connect veterans looking for a
19 mortgage with LMB?

20 A It's that indirect method that we talked about. And so
21 YourVASurvey is advertising on the Internet; consumer clicks
22 on the ad; drives to YourVASurvey; they'll input a bunch of
23 information, and then at the end, write -- UVA survey will
24 then do a handshake or send that data to LMB, and that's
25 where we'll match the consumer to our mortgage claims.

1 Q And what is LMB's relationship with SuitedConnector, the
2 company that runs YourVASurvey?

3 A We're a client of SuitedConnector.

4 Q Have you visited YourVASurvey's website?

5 A Yes.

6 Q How many times?

7 A Several times.

8 Q When was the last time? -- the most recent one?

9 A The last few days.

10 Q And are veterans who access YourVASurvey's website asked
11 any questions by the website?

12 A Yeah, they're asked several questions about their home,
13 their mortgage and then also personally identifiable
14 information or PII -- first name, last name, address, e-mail,
15 phone number, that type of stuff.

16 Q And does LMB display anything YourVASurvey's website?

17 A Yes.

18 Q What?

19 A On the last step, YourVASurvey has a series of
20 disclosures that are LMB's.

21 Q If you can turn to Exhibit 3....

22 Mr. Rich, you should have a copy of Exhibit 3
23 before you. It's also the first pages on the screen. Can
24 you identify what Exhibit 3 is?

25 A It's the LMB terms of use.

1 Q Okay. And it states under the title, "last updated,
2 March 25th, 2015," what does that mean?

3 A That's the last time that this document was updated.

4 Q Do you know where this terms of use was retrieved from?

5 A Yes.

6 Q Where?

7 A We have a -- an archiving or version system, um, at LMB
8 where we store this kind of data.

9 Q Okay. And is this a document that was made in the
10 regular course of business and maintained as such?

11 A Yes.

12 MR. MORGANROTH: Your Honor, I move for the
13 admission of Exhibit 3.

14 THE COURT: Any objection?

15 MR. HEDIN: No objection, Your Honor.

16 THE COURT: It's admitted.

17 BY MR. MORGANROTH:

18 Q Mr. Rich, these terms of use, Exhibit 3, is this the
19 terms of use that was in existence in
20 October and November of 2018?

21 A Yes.

22 Q Was this terms of use displayed on YourVASurvey's
23 website?

24 A Yes.

25 Q I'd like you to turn to Exhibit Number 4. For the

1 record, at the top it says, "LowerMyBills.com provider
2 network includes, but it is not limited to"; that's the first
3 line.

4 A Yeah, I see that.

5 Q Okay. Mr. Rich, can you identify what this document is?

6 A This is a list of LMB's partner network -- or our
7 mortgage clients.

8 Q And do you know where this document was retrieved from?

9 A Yes, the same place as the terms of service.

10 Q Is this a document that was made and maintained in the
11 regular course of LMB's business activities?

12 A Yes.

13 Q From what time frame does this document relate to?

14 A October and November 2018.

15 Q And how do you know that?

16 A From the versioning or revision system.

17 Q Did you retrieve this document from that system,
18 looking -- searching for a document during that time frame
19 that was a provider network document?

20 A Yes.

21 Q Is this document -- was this document displayed on
22 YourVASurvey's website in October or
23 November of 2018?

24 A Yes.

25 Q Why did YourVASurvey display LMB's terms of use and

1 LMB's provider network documents on its website in October or
2 November 2018?

3 A It was part of our agreement of doing business together.
4 When YourVASurvey uses the -- that LMB matching engine -- or
5 that matching process, one of our requirements is that our
6 disclosures have to be displayed on their website.

7 Q And where were LMB's terms of use and provider network
8 displayed on YourVASurvey's website?

9 A The last step of their process where for the most part,
10 they're asking first, identifiable information.

11 Q Now, Exhibit 3 was the terms of use. How does the
12 consumer consent to LMB's terms of use when it's displayed on
13 YourVASurvey's website?

14 A They have to click "see my results," the button.

15 Q Okay. And what happens if a consumer clicks the "see my
16 results button" on YourVASurvey's website?

17 A The process that we built with YourVASurvey is, the
18 consumer hits the button; then YourVASurvey collects all the
19 inputs that the consumers put into the website. Then they'll
20 electronically pass that to LMB where we'll then engage our
21 matching engine, and we'll connect the consumer to our
22 mortgage clients.

23 Q If a consumer accesses YourVASurvey's website but does
24 not click the "See my results" button, will the consumer be
25 transferred to LMB from the YourVASurvey website?

1 A No.

2 Q How do you know?

3 A That's the way that we built the process with YourVA.

4 Q Okay. Mr. Rich, I want to go on and ask you some
5 questions about any interactions that the plaintiff in this
6 case, Amanda Hill, had with LMB and its matching engine. If
7 you could turn to Exhibit 1, please.

8 A Okay.

9 Q Can you identify what this document is?

10 A Yeah, this is data that I pulled from our system using
11 Ms. Hill's phone number. I queried for her interactions that
12 she's had with the LowerMyBills matching engine.

13 Q And is this data and information -- well, what is this
14 data information? Where did it come from?

15 A It came from a system we called DB5, and it captures her
16 interactions with our matching engine.

17 Q Was this information made and maintained in the ordinary
18 course of LMB's business?

19 A Yes.

20 MR. MORGANROTH: Your Honor, I move for the
21 admission of Exhibit 1.

22 MR. HEDIN: No objection, Your Honor.

23 THE COURT: Admitted.

24 (Whereupon, Defense's Exhibit 1 is admitted hereto.)

25 MR. MORGANROTH: And, Your Honor, I also move for

1 the admission of Exhibit 4 which was the provider network. I
2 failed to ask for the admission of that earlier.

3 MR. HEDIN: No objection.

4 THE COURT: Admitted.

5 (Whereupon, Defense's Exhibit 4 was admitted hereto.)

6 BY MR. MORGANROTH:

7 Q Mr. Rich, does Exhibit 1 reflect accurately the
8 information and data that LMB system has captured relating to
9 Ms. Hill's interactions with LMB?

10 A Yes.

11 Q Can you tell by reviewing this record, Exhibit 1, when
12 Ms. Hill had interactions with LMB?

13 A Yes.

14 Q How?

15 A On the first page, on row two, where it says, "Inquiry
16 date time," you'll see it says,
17 "October 10th, 2018, 10:21 p.m. That's in Pacific time.
18 There's three columns. That relates to the amount of times
19 that we matched her to one of our mortgage partners in her
20 first interaction. And then the second page has the -- has
21 the same -- the same rows -- you'll see row 56, also,
22 "Inquiry date time," that is the second interaction; and that
23 was on November 12, 2018, 12:12 p.m., Pacific time.

24 Q So if I'm understanding you correctly, there were two
25 interactions, one on October 10th, 2018, and a second

1 November 12th, 2018?

2 A Yes.

3 Q Okay. And can you explain why there are three different
4 columns for the October 10th interaction and three different
5 columns for the November 12th -- I think the October 10th is
6 ABC, and then November 12th is DEF?

7 A Yes, that represents -- each column represents the match
8 of Ms. Hill to one of our mortgage clients or one of our
9 mortgage lenders.

10 Q So let's focus in on the October 10th, 2018, interaction
11 first. Does the data reflect whether Ms. Hill visited LMB's
12 website directly or whether she was transferred to LMB's
13 website from another third-party website?

14 A It -- it indicates the latter that it's indirect.

15 Q And how can you tell?

16 A If you look at -- starting at row five, where it says
17 "Source," you can see there's a series of characters there in
18 that string. That's internal vernacular, "AFFL," that means
19 it's third party. "SUCO" is our abbreviation for
20 SuitedConnector; "LRE" is our acronym for refinance. And
21 then LMB.YourSurvey.info is part of the site where Ms. Hill
22 came through.

23 Q So what is the site that Ms. Hill came through?

24 A That's the next row, six site -- you can see LA -- or
25 LMB.YourVASurvey.info. And then there are two other

1 indicators I guess is the term you can use. Row 7 and 8 and
2 then nine an ten, that's how we describe what the consumer
3 experience was or like what Ms. Hill saw on that website.
4 Since it's third party, we hard-code all of -- all of those
5 values to this 28724 that you see; that's hard-coded for
6 every record.

7 Q So for the October 10th interaction, there are other
8 rows here that have information. Now, for instance, 13
9 through 18 has the name and address. And 24 through 27,
10 rows -- reference the loan and -- and loan type and
11 self-assessed credit profile. 29 through 36 has information
12 about the home value and mortgage -- current mortgage.

13 Where did that information come from?

14 A Those are inputs from Ms. Hill on YourVASurvey, and then
15 that was -- as we discussed, in that process, once -- "Click
16 your results," once that information was passed on to LMB.

17 Q Okay. And plaintiff's counsel in briefing has alleged
18 that Amanda Hill's information was obtained through data
19 scraping or harvesting. Have you ever heard those terms
20 before data scraping or harvesting?

21 A Yeah.

22 Q What do you understand those to mean?

23 A That's pulling information off the Internet through
24 maybe different websites or the same website; but rather than
25 collecting it, by consumer inputting it, you're pulling it

1 from sites -- putting together a record of some kind.

2 Q Did LMB get any of this information through data
3 scraping or harvesting.

4 A No.

5 Q Has LMB data scraped or harvested information at any
6 time in 2018 through the present?

7 A No.

8 Q Why not?

9 A It's not a sustainable business practice for us. Um,
10 like we talked about, LMB is a matching service where we're
11 matching consumers that are in-market to refinance to our
12 mortgage clients or lenders with the purpose of writing
13 refinance loans. Um, if we're not doing that successfully,
14 right -- if we're not bringing consumers that are in market
15 for that service, then our clients aren't going to want to
16 continue to do business with us. And in addition to that,
17 you can't get that consent with data scraping; right? That's
18 part of the value that we're bringing to our mortgage clients
19 is that consent.

20 Q When you say "consent," you're talking about consent for
21 what?

22 A I'm talking about the consent for -- part of that
23 process is for our mortgage clients to be able to make
24 outreach to the consumer, via phone, e-mail text, whatever
25 that -- you know, whatever that -- you know, whatever way

1 that communicate is; it's part of the value that we're
2 bringing, is that we provide that consent.

3 Q Okay. You mention that SuitedConnector runs the website
4 YourVASurvey. Would you know if SuitedConnector data scraped
5 and harvested information at any time in 2018 through the
6 present?

7 A They didn't data scrape.

8 Q And how can you say that? How can you be so sure?

9 A It's the same comment where -- right? We talked about
10 YourVASurvey is doing the marketing and the website where the
11 consumer is putting in their information, but they're
12 leveraging LowerMyBills to do the matching. And so, again,
13 our in-client, so as mortgage lenders, are using our service
14 for consumers that are in-market to refi, and they want
15 outcomes from that service.

16 Also, the same goes for on the consent side.

17 Q Okay. If you could look at row 20 of Exhibit 1 it says,
18 "IP address," what does that reflect?

19 A That's the IP address that was collected when Ms. Hill
20 was interacting with YourVASurvey.

21 Q And if you look at the information and data on
22 Exhibit 1, can you tell what type of a device Ms. Hill used
23 for her October 10, 2018 interaction?

24 A Yes.

25 Q How can you tell?

1 A Starting on row 47, you'll see a series of rows that
2 start with "DA." "DA" is short for Device Atlas. That's
3 a -- a third party service that we use to help interpret
4 machine data. You can see row 47, browser name. So that's
5 the web browser that was used to access the site. In this
6 case it was Chrome.

7 48, that's the version of Chrome that was used,
8 69.0.3497, et cetera.

9 49 and 50 describe the dimensions of the device and
10 the -- that's digital screen size, 5 inches. "Display PPI,"
11 that's the -- the resolution on the device.

12 And then 51, "manufacturer," it says the phone was
13 made by HTC. The model was a pixel. The year that model of
14 phone was released was 2016.

15 And then Row 54, OS name, Android, that the
16 operating system that the device ran.

17 Q Mr. Rich, how can you tell whether Ms. Hill was actually
18 matched up and connected with any mortgage lenders as a
19 result of her October 10th, 2018 interaction?

20 A There's two rows that indicate that. The -- the first
21 is row 21 where it says "pair provider." You can see
22 AmeriSave, Loan Depo, Quicken loans, those are the three
23 mortgage clients that she was matched to.

24 And then in addition to that, you have row four,
25 "lead status." You'll see the value on each column is sent.

1 That's what we capture. It's the status we capture when
2 we've successfully matched a consumer to a mortgage client.
3 We pass that data onto the mortgage client.

4 Q Is it possible for Ms. Hill to have been successfully
5 sent to three mortgage providers in connection with their
6 October 10th interaction if she did not click on "See my
7 results button" on YourVASurvey?

8 A No.

9 Q Why not?

10 A We don't receive data from YourVASurvey, unless that
11 button is clicked.

12 Q Now, let's move on and focus on the November 12th, 2018
13 interaction.

14 Does the data or information reflect whether
15 Ms. Hill visited directly LMB's website on this occasion or
16 whether she was transferred to LMB's website from another
17 website?

18 A This interaction indicates it's direct. Starting on row
19 59, "source," that string of characters internal lingo
20 translated RT retention; that's what is -- retention is a
21 campaign that we run to reengage with consumers that haven't
22 transacted with one of our mortgage clients.

23 The next TXT that indicates it's a text. "LRE"
24 again, that's refinance.

25 The site row 60, that's the platform we use to send

1 text messages from. And then if you look at the presentation
2 route and presentation marketing, those are a combination of
3 codes that indicate that the interaction was on a responsive
4 funnel that was geared towards refinance.

5 Q Okay. So I just want to make sure I understand, there's
6 an October 10th interaction. She successfully matched
7 through LMB with three mortgage providers. And then LMB
8 sends a text to her at -- after some period of time. Why is
9 the text message sent to Ms. Hill?

10 A It's what we call a retention campaign. So if we
11 identify that a -- a consumer who we've already had an
12 interaction with, hasn't made a transaction with one of our
13 mortgage clients, then we'll reengage through marketing. It
14 could be a text message like in this example.

15 Q Okay. If you could turn to Exhibit 2. And Exhibit 2 at
16 the top says, "Welcome back, Amanda." Can you identify what
17 Exhibit 2 is?

18 A Yes.

19 Q What is it?

20 A This is where Ms. Hill was sent when she clicked on that
21 text message that we just talk about. This is the landing
22 page.

23 Q And how did you retrieve this landing page?

24 A From the data that I pulled. I could use -- you can see
25 on the bottom of this exhibit, there's a bunch of codes on

1 the very bottom. I could use that to marry the interaction
2 that she had with LMB on November 12th.

3 Q And was this landing page made and maintained in the
4 ordinary course of LMB's business?

5 A Yes.

6 Q Is this the way the page looked in
7 November of 2018 when Ms. Hill reengaged with LMB directly?

8 A Yes.

9 MR. MORGANROTH: Your Honor, I move for the
10 admission of Exhibit 2.

11 MR. HEDIN: No objection, Your Honor.

12 THE COURT: It's admitted.

13 (Whereupon, Defense's Exhibit 2 was admitted hereto.)

14 BY MR. MORGANROTH:

15 Q On Exhibit 2, there's -- there's a black -- a button
16 that says, "Calculate your free results"; do you see that?

17 A Yes.

18 Q And right below it, is a language, "By clicking the
19 button above, you express your understanding, consent
20 electronically, via E-sign to the following...." and then
21 there are four items; do you see that?

22 A Yes.

23 Q I want to focus in on the second item. It says, "To the
24 LMB lending terms of use, privacy policy and consent to doing
25 business electronically." What does it mean to you when you

1 see that there's a different color and underlining of terms
2 of use and privacy policy?

3 A It's -- it's a hyperlink. So if you click on that, it
4 will open up another window.

5 Q Okay. And if Ms. Hill had clicked on the terms of use,
6 would she have been taken to the document that we saw
7 earlier, Exhibit 3, the terms of use?

8 A Yes.

9 Q Can we look at that for a moment. And if you could turn
10 at page two of the terms of use, there's a Section 2 that
11 says, "Arbitration," in bold capital letters, and then the
12 paragraph is in all capital letters, and it starts off with,
13 "Do you understand and agree"; do you see that?

14 A Yes.

15 Q Was that Section 2, contained in the terms of use that
16 were displayed on LMB's website in
17 November of 2018?

18 A Yes.

19 Q And did it look like what's on your screen or the
20 document in front of you?

21 A Yes.

22 Q What is the purpose -- let's go back to Exhibit 2 of --
23 including these disclosures on what you call the landing page
24 under -- directly under "calculate your free results."

25 A We want to -- we want to communicate to the consumer

1 what they're agreeing to. We want to capture their consent
2 on those disclosures.

3 Q Okay. If we could go back to Exhibit 1, we'll just
4 round out and finish the November 12th interaction -- again,
5 they're same rows. They have different numbers, but there is
6 information related to Ms. Hill; her name; her address; the
7 mortgage. There's a self-assessment as to credit profile;
8 her loan type. Where did that information come from for the
9 November 12th, 2018 interaction?

10 A This -- this is a retention campaign. So we're
11 reengaging with an existing consumer. So this is a copy of
12 the first interaction.

13 Q Okay. Did Ms. Hill need to reenter that information
14 that she had entered on October 2018 when she reengaged with
15 LMB?

16 A The only one that she reentered or engaged with was row
17 92, refinance purpose -- or refi purpose.

18 Q Okay. And I saw that there was a button on the landing
19 page that had that. Why did Ms. Hill need to reenter that
20 purpose?

21 A The way that that landing page works, is that purpose of
22 refinance is required. So you have to select a value before
23 you can click on the "Calculate your free results."

24 Q In looking at the data information from the
25 November 12th, 2018 interaction, can you tell whether

1 Ms. Hill used the same type of device and browser as she did
2 in her October 10th, 2018 interaction?

3 A Yes.

4 Q Is there any difference in any of the device or browser?

5 A The only -- the only difference is row 102DA browser
6 version. It looks like the version of Chrome was updated
7 from the -- from the October interaction.

8 Q Okay. Would Ms. Hill's view have been affected by
9 viewing LMB's website using the device and browser that are
10 referenced on Exhibit Number 1?

11 A No.

12 Q Why not?

13 A This landing page was built responsive -- and that means
14 basically that the website understands the size of the screen
15 that you're viewing it on. And so it will size the website
16 accordingly. So it will size for a laptop or size for a
17 phone.

18 Q Can you tell by looking at Exhibit 1, whether Ms. Hill
19 was matched up and connected successfully with mortgage
20 lenders as a result of her November 12th, 2018 visit?

21 A Yes, using the same -- using the same methods. So row
22 75, parent provider, you'll see that there are three
23 different mortgage clients or mortgage lenders that she was
24 matched to. And then also, row 58 lead status. You'll see
25 that in each one of those columns, the status is set to

1 "sent," which is the way that we indicate that a match was
2 successfully made and the data was sent to the mortgage
3 client.

4 Q And the reference to "parent provider," what does that
5 mean?

6 A Parent provider is what we call the mortgage client --
7 or the mortgage provider.

8 Q Okay.

9 A That's the term we use.

10 Q Now, on row 73, there's a column that says, "inquiry
11 quality tracking code." Can you tell me what that is?

12 A Yes, that's a -- that's a unique identifier that we
13 capture per interaction for a third party called "Jornaya."
14 They're a -- a validation or a verification service that a
15 lot of our mortgage clients use.

16 Q And what does Jornaya validate and track?

17 A They're capturing the interactions of the consumer on
18 the web with site and then they're -- you know, they're --
19 they're storing or capturing those, and then this unique
20 identifier allows us to match that data together.

21 Q And, again, at a high level without getting too
22 technical, how do they do that? What's the process?

23 A We're -- we're required on every page that we -- that we
24 have on every web page that we have, we put Jornaya code. So
25 we host that third-party code on our website.

1 Q If you could turn to Exhibit Number 5.

2 A Yes.

3 Q Can you identify what Exhibit 5 is? The cover sheet
4 says "Jornaya." And if you turn to the second page, it
5 says -- or first page, "TCPA compliance report"?

6 A Yes, this is a report -- we don't use -- we don't
7 subscribe to the Jornaya service. And so I gave that unique
8 identifier to Quicken Loans to have them request this report
9 from Jornaya.

10 MR. MORGANROTH: Your Honor, we move for the
11 admission of Exhibit 5. We do have a declaration
12 authenticating this report from Jornaya, which we have turned
13 over to plaintiff's counsel.

14 MR. HEDIN: No objection, Your Honor; but we'd ask
15 the declaration be entered into evidence together with the
16 report.

17 THE COURT: Okay.

18 MR. MORGANROTH: That's fine.

19 MR. HEDIN: Okay. And, as well, as the
20 incorporated video.

21 MR. MORGANROTH: Well, we'll do that next.

22 MR. HEDIN: Sure.

23 MR. MORGANROTH: We'll move for the admission of
24 that. Let me just get through this one. So we'll hand a
25 copy of the declaration to the Court.

1 THE COURT: That's fine.

2 MR. MORGANROTH: The declaration, Your Honor, is
3 from a representative of Jornaya. His name is
4 Manny Wald.

5 THE COURT: Are we going to make it part of
6 Exhibit 5, or are we going to give it a new exhibit number?

7 MS. CUNNINGHAM: 5A and B?

8 THE COURT: That's fine with me.

9 MR. MORGANROTH: That's fine. Thank you.

10 (Whereupon, Defense's Exhibit 5A is admitted hereto.)

11 (Whereupon, Defense's Exhibit 5B is admitted hereto.)

12 BY MR. MORGANROTH:

13 So, Mr. Rich, if could you turn to the first page after the
14 cover page, the one that says, "TCPA compliance report," it's
15 the section that says, "Who is Jornaya," do you see that?

16 A Yes.

17 Q And it -- at the top it says, "Jornaya provides a
18 neutral third party technology base platform that tracks the
19 origin and history of a lead event in the consumer actions
20 that occurred at that event."

21 And then the third paragraph goes on. It says,
22 "Companies that purchase third party data leads or generate
23 their own data leads on their website forums or in their call
24 centers use TCPA Guardian to provide neutral verification
25 assurance that the activities regarding the collection of the

1 consumer's consent to be contacted meet the requirements."

2 If you look at the next page, Mr. Rich, is there --
3 do you know what -- what lead this report pertains to?

4 A Yes, the universal lead, ID -- the 6F7A, that ties to
5 the data that we saw in the previous exhibit.

6 Q And so for what -- there were two interactions. There
7 was an October 10th and a November 12th, which -- which
8 interaction is this report?

9 A This is for the November 12th interaction. You could
10 see that the IP address is the same, also.

11 Q And the section below that, it says "TCPA disclosure
12 statement witnessed at the lead event." What is that
13 reflecting?

14 A This is Jornaya's verification of the disclosures that
15 the consumer saw.

16 Q Okay. Does this match the disclosures that were on that
17 landing page that we looked at -- I believe it was
18 Exhibit Number 2?

19 A Yes.

20 Q All right. If you can turn the page, Mr. Rich, to the
21 last page, this is something that plaintiff's counsel
22 referenced. At the very bottom, it says "visual playback
23 link," do you see that?

24 A Yes.

25 Q What does that mean?

1 A As part of the report, Jornaya provides a playback that
2 shows the consumer's interaction with the website.

3 Q Okay. And when you receive this report, did you click
4 on that link?

5 A Yes.

6 Q And have you made a copy of what was played back when
7 you clicked on the link?

8 A Yes.

9 MR. MORGANROTH: Your Honor, we'd move for the
10 admission of that playback video, Exhibit 6, and that's part
11 of that declaration from Jornaya.

12 MR. HEDIN: No objection, Your Honor, but just --
13 having reviewed this exhibit further, Number 5, it appears
14 that there's a second report that was also attached to
15 Mr. Wald's declaration that's not included in this exhibit.
16 And I was just -- I think it may be prudent for the parties
17 to include both of them in the exhibit so we can utilize them
18 together.

19 MR. MORGANROTH: Well, that was a report that
20 related to YourVASurvey's website, and that will be our next
21 witness.

22 MR. HEDIN: Okay. Fair enough.

23 THE COURT: It's already been admitted as
24 Exhibit 5A or -- right?

25 MR. MORGANROTH: The declaration. Now we're going

1 to move for the admission of Exhibit 6 which is this video --
2 the playback video. It's referenced in 5A.

3 THE COURT: Okay. It's admitted. Go ahead.

4 (Whereupon, Defense's Exhibit 6 is admitted hereto.)

5 MR. MORGANROTH: Thank you, Your Honor. So if we
6 could play the video. And I --

7 (Whereupon, video is played in open court.)

8 BY MR. MORGANROTH:

9 Q Now, so the video is playing. Can you explain what
10 we're looking at, Mr. Rich, right now?

11 A Yeah, so what we're seeing here is the -- the website
12 has rendered; right? So this is now what Ms. Hill's looking
13 at.

14 Q And right now I don't see anything happening. What --
15 what -- do you know what's happening?

16 A She's not interacting with the website. She could be
17 reading it. She could be looking away from it, but the
18 website is up and invisible.

19 Q Okay. And I promise that there will be some activity,
20 but we didn't put music up -- oh, let's stop there. So we
21 see that the middle section has now turned colors. Can you
22 explain what happened there?

23 A So that indicates that Ms. Hill has interacted with
24 purpose of refinance with that field.

25 Q Okay. And, again, we're watching -- we're at about 43

1 seconds in. Nothing seems to be happening again. What's the
2 status of the website at this point?

3 A Still available rendered being shown but no explicit
4 interaction by Ms. Hill on the website; could be reading; not
5 sure.

6 Q So when you say it's being shown or rendered, is it on
7 her device or mobile phone that we saw?

8 A Yes.

9 Q Okay. So if we wait a few more seconds, there will be
10 some more activity, I believe. I'll pause it there. I see
11 that the purpose of refinance has now been filled in. There
12 was a selection that says, "change in loan terms." Can you
13 explain how that happened?

14 A That was an interaction by Ms. Hill. She's now chosen a
15 purpose of refinance.

16 Q If you can pause it there. What just happened? There's
17 a new page now being shown, and it says, "Results for 35312
18 Frederick Street?"

19 A So what's happened is the -- Ms. Hill needed to -- the
20 way that the website is built is, you have to choose "purpose
21 of refinance" that then allows you to click the "calculate
22 your free results." You click on that and then a couple of
23 things happen. One is, the consumer is brought to this
24 web -- this part -- or this web page, I should say, which
25 is -- we call the "thank you" page. You can see it has some

1 information that's Ms. Hill's address. We do a calculation,
2 determining potentially what her monthly payment would be for
3 a 15-year mortgage. What's happened behind the scenes is,
4 once you hit that button, right? The consumer is brought to
5 this "thank you" page. Behind the scene's what's happened
6 is, that's now engaged with that matching engine process that
7 we've talked about. So it's taking the inputs, and it is
8 going against that LMB matching engine and then matching two
9 of our mortgage claims.

10 Q And if Ms. Hill had not clicked the "calculate your free
11 results" button, could she have gotten to this page?

12 A No.

13 Q Why not?

14 A It's not how we built the product.

15 Q You indicated that Ms. Hill was matched with three
16 mortgage lenders. As a result of clicking on the "calculate
17 your free results," where is that reference? Where is the
18 referral for Ms. Hill?

19 A It's cut off on this; but if you were to scroll down --
20 you can see three lenders in our network; right? You can see
21 that language there. If you were to scroll down, you would
22 see the three lenders that she was matched to.

23 Q And was it -- the three lenders sent to her in any other
24 way?

25 A No.

1 Q If Ms. Hill had not clicked on the "purpose refinance"
2 button, would she have been able to click on the "calculate
3 your free results" button?

4 A No.

5 MR. MORGANROTH: Well, thank you, Mr. Rich. I have
6 no further questions at this time.

7 THE COURT: Can you go back a page. Can you put
8 that thing and go back to the first page.

9 MS. CUNNINGHAM: Okay.

10 MR. MORGANROTH: You want us to pause it,
11 Your Honor?

12 THE COURT: It's the -- go into the next page.
13 This is all what's happening on her phone?

14 THE WITNESS: Yes, this is what it looks like on
15 Ms. Hill's phone.

16 THE COURT: So this company tapes everything?

17 THE WITNESS: Yeah, we put code on our website
18 that's from them that's capturing all of this -- the third
19 party is, Jornaya is.

20 THE COURT: Was capturing everything that the --
21 that the user is doing?

22 THE WITNESS: That's correct.

23 THE COURT: Okay. So it's capturing it
24 permanently, obviously.

25 THE WITNESS: Yes.

1 MR. MORGANROTH: Here's the second --

2 THE COURT: Okay.

3 MR. MORGANROTH: The -- and then you want to keep
4 play it, you'll see the --

5 THE COURT: That's fine. Okay. Go ahead.

6 MR. MORGANROTH: Okay.

7 Well, thank you, Your Honor. I have no further
8 questions at this time.

9 **CROSS-EXAMINATION**

10 MR. HEDIN: Good afternoon, Mr. Rich.

11 THE DEFENDANT: Good afternoon.

12 BY MR. MORGANROTH:

13 Q Could you please go back to defendant's Exhibit 5
14 beginning with 5A which --

15 A The Jornaya?

16 Q Which is the Jornaya report.

17 A Okay.

18 Q And just one minute. So this report at 5A pertains to
19 the November 2018 interaction that Ms. Hill had on the
20 YourVASurvey.info website; is that correct?

21 A Is that November 12th?

22 Q Correct. But in November of 2018.

23 A Oh, yes. Uh-huh. Yes.

24 Q Okay. And this report was attached to the declaration
25 of Manny Wald which has been marked as defendant's Exhibit

1 5B; correct?

2 A I'm not -- yes -- yes, this is the Exhibit 5B.

3 Q Okay. And I'd just like you to review this declaration
4 so you're familiar with what it says, because I have a few
5 questions regarding the contents of it.

6 A Is there a part that you want me to be reviewing, in
7 particular?

8 Q Well, in particular, paragraph four, which --

9 A "Jornaya's TCPA Guardian Services runs a proprietary
10 script"?

11 MR. HEDIN: Correct. If you could just read that
12 paragraph and let me know when you're ready.

13 (Pause in the proceedings.)

14 THE WITNESS: Okay. I've read the paragraph.

15 BY MR. HEDIN:

16 Q Okay. And you testified earlier that LMB retained
17 Jornaya as a third party vendor on its behalf?

18 A No, that's not accurate. We host the Jornaya code on
19 our website, and we asked -- we don't pay for that service.
20 We just host the code. And so we asked Quicken Loans to
21 retrieve the report for us.

22 Q Okay. Um, but in your job are -- at -- your daily job
23 receiving optimization of this -- this site, you're familiar
24 with Jornaya and its technology and the way it works.

25 A Yeah, I have a good understanding of it, I think.

1 Q Okay. Would -- does this -- do the statements made by
2 Mr. Wald in paragraph four accurately describe the way in
3 which Jornaya technology works on the YourVASurvey.info site?

4 MR. MORGANROTH: Objection, Your Honor. I think
5 you're mixing up the site. This is LMB's site. YourVASurvey
6 is a different site.

7 MR. HEDIN: Correct.

8 BY MR. HEDIN:

9 Q But you testified earlier that LMB works together with
10 SuitedConnector to set up the site that Ms. Hill frequented
11 in October 2018; is that right?

12 A We -- we work with SuitedConnector -- we worked with
13 them on the handshake between the two websites, but we didn't
14 build that website -- LMB didn't.

15 BY MR. HEDIN:

16 Q Okay. But you are familiar with the Jornaya technology
17 and what it does and what the videos depict that it captures
18 in connection with the consumer's interaction on a site?

19 A Yeah, I have okay knowledge of it.

20 Q Okay. So if you could look at the sentence toward the
21 end of that paragraph that begins with, "this data is stored
22 and can be retrieved," and it goes on to say, "to visually
23 render the lead creation experience, including the TCPA
24 disclosure language presented to the consumer and the effect
25 or progress on the page based on how they consented, for

1 example, the effect or next page on the web page, resulting
2 from the action needed to be taken by the consumer on the Web
3 page, for example, they actively clicked or selected an
4 electronic submission button," do you see that?

5 A Yes.

6 Q Okay. And is that a fair characterization of your
7 understanding of how the technology works on websites that
8 it's deployed on?

9 A Yes, the code has to be on every page in order for it
10 to -- to capture those interactions.

11 Q Okay. And now, I'm just -- I'd like to just play the
12 video again that we just saw. If we could, Exhibit 6 --
13 excuse me -- and if we could just fast-forward this video --
14 I'm not sure if I have the ability to do that. If we can
15 just fast-forward this to the very end when the option is
16 selected and the screen changes.

17 Okay. So let's -- we're toward the end of the
18 video -- at the 1 minute and 47 mark -- and if we could just
19 press "play" so we can see the change in screens.

20 Okay. So at the -- actually at the 145 mark, the
21 screen changed to a LowerMyBills.com page with the dollar
22 value of \$2633 on it; correct?

23 A Yes.

24 Q Okay. And that change in screen reflects as Jornaya
25 described in Mr. Wald's declaration, the next page on the Web

1 page, resulting from the action needed to be taken by the
2 consumer -- the clicking of the button; is that fair?

3 A Yes, the codes -- the code is running on each one of
4 those pages.

5 Q Okay. So the fact that the page went to this -- the
6 fact that the video went to the screen with LowerMyBills.com
7 at the top of it, evidences the fact that a button was
8 clicked?

9 A In this case, yes, yes.

10 Q Okay.

11 A That's how we built the product.

12 Q Okay. I'd like to go back now to Mr. -- Mr. Wald's
13 declaration at Exhibit 5 B. This -- just one minute -- okay.
14 And then if you could go to paragraph five -- this references
15 an attachment A which pertains to the lead ID that was
16 generated from Ms. Hill on October 11, 2018; correct?

17 A Um, that's -- yes, that's what it says, agree.

18 Q Okay. And then Exhibit A to this declaration was not
19 submitted in Exhibit 5A -- but if you could go now to
20 plaintiff's Exhibit 16 -- and this is in the black binder
21 that you would find there. And this is actually a composite
22 exhibit with Mr. Wald's declaration immediately followed by
23 the two reports, the first of which I want to ask you a few
24 questions about.

25 A With universal ID ending in 891?

1 Q That's correct. And this is on the -- the fifth page of
2 this exhibit -- and if you go back to the prior page, it's --
3 this yet another TCPA compliance report, similar to the one
4 that we looked at, at Defendant's Exhibit 5B; correct?

5 A Yes.

6 Q Okay. And this is the lead information captured by
7 Jornaya in realtime when Ms. Hill frequented the
8 YourVASurvey.info website on October 11th, 2018; correct?

9 A I need to look at the data that we pulled, but assuming
10 this is the -- the accurate Jornaya report, that would make
11 sense.

12 Q Okay. Well, let's go back to defendant's Exhibit
13 Number 1 so we can verify that to make sure it's the same.
14 If you go to defendant's Exhibit Number 1 and to the first
15 page of that exhibit which references the -- the October 2018
16 interaction, can you confirm that this data corresponds to
17 the Jornaya report at plaintiff's Exhibit 16 on page six?

18 A That is the same -- it has the same universal lead ID.
19 It looks like the IP address is the same.

20 Q Okay. And the report we previously looked at
21 Defendant's Exhibit 5B, there's also a video link playback
22 for this one too, isn't there?

23 A Yes.

24 Q Okay. And this is on the next page. And so I'd ask
25 that we go ahead and play that video. Actually, if we can

1 just click on the link on this document on the computer.

2 Mr. -- excuse me -- Mr. Rich, are you familiar with
3 a company called "Active Prospect"?

4 A Yes.

5 Q Okay. And Active Prospect, would you just describe what
6 types of services they provide to its clients?

7 A I'm not as familiar with Active Prospect as with
8 Jornaya. It's my understanding that they offer some kind of
9 similar verification or validation service.

10 Q Okay. Just one minute, Your Honor. I just -- we're
11 trying to locate one exhibit.

12 MR. HEDIN: Okay. Just one minute, Your Honor.
13 Permission to access my computer?

14 THE COURT: That's fine.

15 MR. HEDIN: Thank you.

16 THE COURT: If you need time to find it, I have a
17 criminal matter set to go at 3:00 -- and I was going to push
18 them back. We're going to have to take a recess to do it
19 anyway. This might be a good time if you need time to go
20 into your computer and try to find the exhibit.

21 MR. HEDIN: Thank you, Your Honor. That would be
22 great.

23 THE COURT: I have another matter at 3:00. So why
24 don't we do that. Why don't we recess, and then I'll do the
25 criminal matter. You're all going to have to leave the

1 courtroom for this matter anyway; but you can leave -- well,
2 you should move your stuff, because the lawyers are going to
3 be sitting there -- but why don't we talk a recess and -- I
4 mean, it won't be a recess for you -- we're going to take a
5 recess and then start with the criminal matter and then
6 you'll come back after that.

7 MR. HEDIN: Thank you, Your Honor.

8 (Recess.)

9 THE COURT: Okay. We're back on the record. --
10 we're going to have to take another recess at 4:00 -- I don't
11 know what we're going to do. The interpreter showed up
12 really late. So that's why we're moving forward with this.
13 So we'll figure this out.

14 So why don't we continue.

15 Go ahead.

16 BY MR. HEDIN:

17 Q Mr. Rich, before we took the break, we were discussing
18 the October 2018 interaction on the LowerMy -- excuse me --
19 YourVASurvey.info website that's depicted in the first report
20 attached to Mr. -- Mr. Wald's declaration. If you can just
21 turn to that report.

22 A What exhibit was that?

23 MR. HEDIN: It's Exhibit 16 -- plaintiff's
24 Exhibit 16.

25 THE WITNESS: Okay. Thank you.

1 BY MR. HEDIN:

2 Q Sure. And so the first report that we're looking at
3 here, the October 11th, 2018 report, this -- the date on that
4 report corresponds to the data reflected on the first page of
5 defendant's

6 Exhibit Number 1; correct?

7 A Yes.

8 Q And if you go to the second page of Defendant's
9 Exhibit 1, this data pertains to the November 2018
10 interaction; correct?

11 A I'm not sure which page you're on.

12 Q Page two of Defendant's Exhibit 1.

13 A Oh, page two of exhibit -- okay, yes. So the -- the
14 second page that shows November 12th and the data from those
15 interactions.

16 Q And you testified earlier that this was a -- the
17 campaign that this lead was generated through the second
18 one -- the November 2018 one, that this was a retargeting
19 campaign?

20 A Yeah, it's a retention campaign.

21 Q A retention campaign, okay.

22 And -- and -- and it's referred to as a -- a mobile
23 retention campaign here in row number 64; correct?

24 A That was the -- that was the consumer experience. So
25 that was the name of part of what the website was.

1 Q Okay. And it -- in column -- or excuse me -- row 59, it
2 says, "RT_TXT."

3 A Yes, uh-huh.

4 Q So it means -- that refers to a text messaging retention
5 program?

6 A Yes, so the RT -- is retention -- that's short for
7 retention. "TXT" is text.

8 Q Okay. And I think you testified earlier that Ms. Hill
9 was brought to the LMB site on November -- in November 2018,
10 because she had clicked a link in a text message; is that
11 right?

12 A Yes.

13 Q Okay. Now, I'd like you to turn to plaintiff's
14 exhibit -- composite Exhibit Number 19, which is the separate
15 white binder that you should have. Okay. If you could go to
16 the first tab in that exhibit -- and we don't have this for
17 the screen, unfortunately, but if you go to paragraph -- just
18 one minute -- paragraph 15, of -- of this first tab -- in
19 that exhibit -- let me know when you're there, please.

20 A Um, "Ms. Hill has on several occasions," is that 15 that
21 you're talking about?

22 Q Yes, correct. And just to back up, have you seen this
23 document before -- the document that's marked Plaintiff's
24 Exhibit 19, part one?

25 A I'm not -- I'm not sure what I'm looking at.

1 Q Okay. If you could go to the first page of it.

2 A Am I looking at tab one -- is this -- oh, I'm sorry --
3 the entire thing is 19?

4 Q Correct.

5 A No, I'm not familiar with this.

6 Q Okay. But you are familiar with the text messages that
7 LMB sent to Ms. Hill; correct?

8 A Yes.

9 Q Okay. So in paragraph 15, if you turn over to the next
10 page where it continues, which is page six of the ECF
11 pagination, do you see that screen shot?

12 MR. MORGANROTH: I just want to make sure where
13 you're at -- you're on Exhibit 19.

14 MR. HEDIN: And then tab one of that exhibit.

15 MR. MORGANROTH: Page? We didn't get a binder. So
16 we're trying to find --

17 MR. HEDIN: So we're in the complaint -- it's the
18 first amended complaint, ECF 20.

19 MR. MORGANROTH: Okay.

20 MR. HEDIN: ECF 20, sorry.

21 MR. MORGANROTH: Okay. Go ahead.

22 I got it.

23 BY MR. HEDIN:

24 Q Do you see the screen shot on page six there -- 6 of 16.

25 A Where it has 26293 on the top on the screen shot.

1 Q No. If you could go to the next page in paragraph 15 --
2 below paragraph 15, it goes over to the next page.

3 A Okay. I see that.

4 Q Okay. Do you see that message -- that first message
5 there, Monday, October 22nd at 8:12 a.m.?

6 A Um, yes, I do.

7 Q Okay. Did -- did LMB send Ms. Hill that text message?

8 A I'm not sure.

9 Q Okay. What would you need to do to -- to determine
10 whether that came from LMB?

11 A I just don't know top of mind if that's URL or not in
12 terms of like the messaging and those types of things.

13 Q Okay.

14 A Yeah.

15 Q And there's a hyperlink in that first text message. Is
16 that -- did you know -- do you know whether that's a
17 hyperlink that directed to the -- the LMB page that she
18 accessed on November 12th, 2018?

19 A I I'm not sure. I don't -- I'm not sure what the actual
20 URL looked like.

21 Q Okay. But in any event, that message appears to have
22 been sent after Ms. Hill visited the YourVASurvey.info site
23 but before she visited the LMB site in November; correct?

24 A Um, the -- yeah, the first interaction she had was with
25 YourVA in October and the second was to LMB in November, but

1 we did match her, right, in both instances to clients.

2 Q Okay. And I think you testified that the
3 re- -- is it retargeting or --

4 A The retention campaign.

5 Q The retention campaign was a campaign that's done in
6 order to match people?

7 A The -- the idea of a retention campaign is when we've
8 already had one interaction with a consumer, and they haven't
9 transacted with our clients, meaning, they haven't
10 reidentified or whatever the case may be. Then we'll
11 reengage or we'll do -- we'll run the retention campaign to
12 see if they want to come back to LowerMyBills to be matched
13 again.

14 Q Even though --

15 THE COURT: How do often do you reengage?

16 THE WITNESS: It depends. I mean, usually the
17 first one would be 30 days would be the first attempt. Um,
18 and then it could be another 30, 60, 90 -- and then I don't
19 remember what the cutoff is, but if we don't have
20 interaction, then after -- again, I don't know the exact day
21 but 90, 120 in that kind of ballpark days, we'll stop.

22 THE COURT: Go ahead, Counsel.

23 BY MR. HEDIN:

24 Q And you testified earlier that you have frequented
25 YourVASurvey site regularly since October of 2018 and most

1 recently a few days ago; is that correct?

2 A Yes, I have been to it most recently in the last couple
3 days.

4 Q Okay. Did the YourVASurvey.info site that existed in
5 October 2018, did it look the same then as it does today and
6 function the same way?

7 A I don't know that I can answer that in terms of, you
8 know, what it looked like in 2018 and what it looks like
9 today if it's verbatim or not.

10 Q But you can't point to any substantive differences that
11 you're aware of?

12 A Um, yes, I -- I don't know of any substantial
13 differences; but again, I didn't do that kind of, like,
14 capture in 2018 and then look again in 2019 and do some kind
15 of comparison or contrast.

16 Did that answer your question?

17 Q Yes, thank you.

18 A Okay.

19 MR. HEDIN: Yeah, we have nothing further. Thank
20 you, Mr. Rich.

21 **REDIRECT EXAMINATION**

22 BY MR. MORGANROTH:

23 Q Mr. Rich, plaintiff's counsel was asking you some
24 questions earlier about Jornaya and how it worked. You've
25 testified that LMB on its website loads or inserts Jornaya

1 code on its web pages; is that right?

2 A Yes.

3 Q And is that on every page does LMB load the code?

4 A Yes, on every page.

5 Q Okay. If a code -- if the code is not loaded on a
6 particular page, will that page be tracked and validated in
7 part of the video playback?

8 A No, you have -- you have to have the code in order for
9 Jornaya to make the capture.

10 Q Now, there's a --

11 THE COURT: You have to have what code?

12 THE WITNESS: So -- so Jornaya has -- they have
13 this, like, it's called a "snippet." It's a little piece of
14 code that you put on each page. And so when you go to the
15 Web page an it loads, what happens is that piece of code
16 executes and that basically creates a connection to Jornaya
17 that allows them to capture interaction for that page. And
18 the way that a Web page works is that when you go to the next
19 page, you've got to load the code again. And so you'd have
20 to have that call to Jornaya once again in order for them to
21 make that capture.

22 THE COURT: And the call is simply going to the
23 page though, because earlier you testified when I asked you
24 that everything that -- that it basically tapes everything.
25 It keeps everything.

1 THE WITNESS: Yes.

2 THE COURT: Okay. Thank you.

3 BY MR. MORGANROTH:

4 Q And do you know if the other website, YourVASurvey, do
5 you know if they have loaded Jornaya's code on every single
6 one of its Web pages?

7 A I don't know that for certain.

8 Q And we saw in the video playback that final page from
9 LMB's November 12th, 2018 interaction with Ms. Hill where it
10 had what you call the "thank you" page after she clicked,
11 "calculate your free results." Do you know if YourVASurvey
12 loads Jornaya's code on its final page?

13 A I don't know that for certain.

14 MR. MORGANROTH: That's all I have, Your Honor.
15 Thank you, Your Honor.

16 THE COURT: Anything else, Counsel?

17 MR. HEDIN: No, Your Honor.

18 THE COURT: Let me ask you a couple of questions.
19 Since this happened in 2018, you know, the way the pages --
20 can you put up that -- that little video again.

21 Has there been any change in the way the pages look
22 today since that time?

23 THE WITNESS: I'm sure that they've evolved
24 somewhat. We're constantly testing to try and improve the
25 pages.

1 THE COURT: But do you know as you sit here today,
2 whether there's been any changes to any of those pages that
3 we saw earlier?

4 THE WITNESS: I can't say with confidence if there
5 have or haven't been. I mean, the way that it looks -- the
6 superficial way that it looks might have changed; but the
7 underlying kind of logic that we described where you have to
8 click the button and engage with a matching, things like
9 that, all those pieces have stayed steady.

10 THE COURT: Okay. And -- and when you -- did you
11 put it up? So go back up. It says, "Calculate your free
12 results." So earlier you were testifying about consent being
13 sort of key and critical to the way this whole thing
14 operates. So I -- I -- in this Exhibit 1 that is I guess
15 defendant's Exhibit 1 -- is there a box anywhere in here -- I
16 know there's a point where it says, "sent"; but is there a
17 box anywhere in there where it says something like "Consent.
18 This is the exact date and time that the person consented,"
19 because you have a lot of data here, and it seems to me if
20 that's one of the most critical things that you -- that you
21 need, that there would be a box that would indicate when the
22 consent happened -- the actual time -- you know, the actual
23 date and minute -- you know, the actual time that it
24 happened. Isn't there one here in any of these?

25 THE WITNESS: We -- it's inferred through row four

1 "lead status."

2 THE COURT: Okay. That's kind of what you were
3 saying earlier, and I guess that's -- well, I said "sent."
4 It's inferred, but why not have a -- a specific box for that?
5 It seems like -- it seems to be -- based on your testimony,
6 it seems to be the crux of everything we're dealing with here
7 today.

8 THE WITNESS: I think that's part of why a lot of
9 our clients use this Jornaya product where it's a third party
10 verification where I can go to them and tell them, hey, I --
11 you know, I built this. This is how it works. I'm capturing
12 this, and you can also use a third party to verify that I am,
13 indeed, doing as I say.

14 THE COURT: Okay. And then -- but Jornaya catches
15 everything; right? They're going to catch it whether the box
16 is checked or not, they catch everything.

17 THE WITNESS: Yes.

18 THE COURT: Okay. Anything else, Counsel?

19 MR. HEDIN: Yes, Your Honor. I just have one more
20 follow-up.

21 THE COURT: Go ahead.

22 **RECROSS EXAMINATION**

23 BY MR. HEDIN:

24 Q Mr. Rich, you testified that the data that's reflected
25 on the first page of defendant's Exhibit 1 was sent to LMB by

1 SuitedConnector; is that right?

2 A From the YourVASurvey, yes.

3 Q Okay. But -- and I think you also testified that
4 SuitedConnector wouldn't have sent it to you if the button
5 hadn't been pushed; is that right?

6 A Yes.

7 Q How do you know that?

8 A Two things: One, that is the agreement that we made.
9 And then the second is, is that's part of the -- the kind of
10 the handshake or the data exchange, right -- when we actually
11 connected to the SuitedConnector platform to do the data
12 exchange.

13 MR. HEDIN: Okay. But LMB doesn't have any actual
14 evidence that the button was clicked, apart from the
15 agreement between Quicken sued SuitedConnector.

16 THE WITNESS: No.

17 MR. HEDIN: Okay. Thanks. I have nothing further.

18 THE COURT: Anything else, Counsel?

19 MR. MORGANROTH: If I may follow up with a couple
20 of questions on the question Your Honor had.

21 THE COURT: Okay.

22 **REDIRECT EXAMINATION (FURTHER)**

23 BY MR. MORGANROTH:

24 Q If you can turn to Exhibit 5 -- defendant's Exhibit 5?

25 A Yes.

1 Q And this is the Jornaya TCPA compliance report?

2 A Uh-huh.

3 Q If you can turn to the second page, the last paragraph,
4 it says, "How does Jornaya help keep companies
5 TCPA-compliant."

6 A Yes.

7 Q And then it -- I'll read it and try to read it slowly.
8 It says, "As a neutral third party witness to the events that
9 take place on a website or a call center, TCPA Guardian
10 provides facts and what happened during a consumer's visit to
11 the website or interaction with a call center representative.
12 TCP companies" -- I'm sorry -- "TCPA Guardian helps companies
13 to verify" -- and then it has bullet points about disclosures
14 and -- and language for TCP compliance. It -- why would --
15 why would a complaint of yours use TCP Guardian as opposed to
16 just relying upon LMB's word?

17 A It's their -- they're a third party; right? So it
18 helps ensure -- trust would verify between our interaction
19 with the clients.

20 Q And you were asked some questions by the judge in terms
21 of recording the consent on Exhibit 1. If the button,
22 "calculate your free results" is not clicked, would there be
23 any consent to record?

24 A No, that -- that wouldn't -- our matching engine
25 wouldn't engage, and therefore, there wouldn't be a

1 connection between the consumer and the mortgage clients and
2 you wouldn't have that status sent. It wouldn't be matched
3 to any of the parent providers either.

4 Q Okay.

5 So if the button is clicked, and it says right
6 underneath "By clicking the button, you consent," and it has
7 the items 1 through 4 -- at that point, the matching engine
8 is activated?

9 A When the button is clicked, that is when the matching
10 engine is activated.

11 Q And if you could put up -- I think it's Exhibit 5 -- I'm
12 sorry -- Exhibit 2 -- there's "the purpose of refinance"
13 button you had testified about. And as I understand your
14 testimony, that has to be clicked before the "calculate your
15 free results" button is activated; is that right?

16 A Yes.

17 Q Okay. And under "the purpose of refinance" button,
18 there's another disclaimer -- I'm sorry -- disclosure. It
19 says, "By selecting your E-Finance purpose, you consent to be
20 contacted, including through automated or prerecorded means
21 by our providers"; do you see that?

22 A Yes.

23 Q And if we wanted to know what time a consumer clicked on
24 "the purpose of refinance" button or the "calculate your free
25 results" button, that -- is that recorded the Jornaya

1 playback if you have code for this page?

2 A Yes.

3 Q So -- okay, no further questions. Thank you.

4 THE COURT: Anything else, Counsel?

5 MR. HEDIN: Nothing further, Your Honor.

6 Thank you.

7 THE COURT: Okay. The witness is excused. Thank
8 you very much.

9 Next witness, please.

10 MR. TAYMAN: Quicken Loans calls Larry Smith.

11 **DEFENSE'S WITNESS, LARRY SMITH, SWORN.**

12 COURTROOM DEPUTY: Please state your name and spell
13 it for the record.

14 THE WITNESS: My name is Larry Smith, L-A-R-R-Y
15 S-M-I-T-H.

16 THE COURT: Go ahead.

17 **DIRECT EXAMINATION**

18 BY MR. TAYMAN:

19 Q Good afternoon, Mr. Smith.

20 Can you please tell the Court where you are
21 currently employed?

22 A SuitedConnector.

23 Q And what do you do for SuitedConnector?

24 A I'm the chief technology officer.

25 Q And as the chief technology officer for SuitedConnector,

1 what are your responsibilities?

2 A I'm responsible for all development, as well as all
3 front end technology and back end technology.

4 Q And when you say "development," what do you mean?

5 A I'm development. We -- for all of our website
6 development and our database development on the back end.

7 Q Okay. And how long have you been the chief technology
8 officer?

9 A A little over two years.

10 Q And could you please briefly explain for us what
11 SuitedConnector is?

12 A SuitedConnector is a company who owns and operates
13 websites, and we connect individuals with mortgage and
14 financial service people.

15 Q And are you familiar with the website
16 LMB.YourVASurvey.info?

17 A Yes.

18 Q And for purposes of today, I'll just refer to that as
19 YourVASurvey; is that okay?

20 A Yes.

21 Q And who operates that website?

22 A SuitedConnector.

23 Q And can you explain what that website is?

24 A That website was developed specifically for LMB who is
25 our partner. In order to connect people to -- with the

1 financial services as I described a little bit earlier.

2 Q And does that website target certain types of consumers?

3 A Yes, it does.

4 Q And who would those be?

5 A Veterans.

6 Q Now, Mr. Smith, are you familiar with the plaintiff in
7 this matter, Amanda Hill?

8 A I am.

9 Q And can you explain how?

10 A Um, I was asked to research our system in that Ms. Hill
11 had visited the LMB.YourVASurvey.info website.

12 Q Mr. Smith, Ms. Hill has said in this case that -- let me
13 restart -- what is the -- what did Ms. Hill do at that
14 website, if you could briefly explain?

15 A Ms. Hill visited the website; filled out the information
16 that was on the website; got to the last page. And on the
17 last page, there is a "See my results" button and also TCPA
18 language, and she clicked that; and we received the
19 information and then that was passed along to our partner
20 LMB.

21 Q And what do you mean by TCPA language?

22 A TCPA language is the language provided by LMB for us to
23 display on the last page by requirement.

24 Q And when did Ms. Hill visit the YourVA website?

25 A In October of 2018.

1 Q And, Mr. Smith, Ms. Hill has said in this case that she
2 went to your website but not clicked the "see my results"
3 button. Would SuitedConnector have her information had she
4 not clicked that button?

5 A No.

6 Q Okay. If we can show Defendant's Exhibit 8. Mr. Smith,
7 are you familiar with Defendant's Exhibit A on the screen
8 here?

9 A I am.

10 Q And what is it?

11 A This is a depiction of the site LMB.YourVASurvey.info.

12 Q And who created this document that we're seeing here?

13 A I did.

14 Q And how did you do that?

15 A I took a device from our device cabinet, which in this
16 case is a pixel Android device.; I set it on the table; I
17 browsed to that site and went through it, each one, each
18 screen and took pictures of that.

19 Q And when did do you that?

20 A October of this year.

21 Q Of -- in -- has this website changed since
22 October of 2018 when Ms. Hill would have gone to the YourVA
23 site?

24 A Very small features have changed.

25 Q And how do you know that?

1 A Because I looked at our source control log to see what
2 had changed on the sites.

3 Q And the page with the TCPA disclosures, did that change
4 since October 2018?

5 A No.

6 Q And has this website, O. Wiseman maintained by
7 SuitedConnector in the ordinary course of business?

8 A Yes.

9 MR. TAYMAN: Your Honor, we move to admit
10 Defendant's Exhibit 8.

11 MR. HEDIN: No objection.

12 THE COURT: Okay. It's admitted.

13 (Whereupon, Defense's Exhibit 8 is admitted hereto.)

14 BY MR. TAYMAN:

15 Q Mr. Smith, is there any charge to consumers for using
16 this website, the YourVASurvey website?

17 A No.

18 Q And if you don't mind using Exhibit A, could you just
19 walk us through the first few pages just to explain how the
20 website works and how a consumer would interact with the
21 website?

22 A Yes, a consumer would come to this first page here, and
23 this site is a series of questions. Each page usually one --
24 one or less -- one or more questions; and in this case, the
25 first page, you'll see here that a simple question of, "Have

1 you served in the military," is displayed, and the user would
2 select yes or no and press "next." Then it goes through a
3 subsequent series of questions until it reaches the end.

4 Q Okay. If we could turn to page 9 of the exhibit to the
5 zip code.

6 Mr. Smith, you just briefly explained what happens
7 on this page?

8 A Yes, at this point, the user is presented the zip code
9 in which they would type their zip code in, and then they
10 would press "next."

11 Q And can they advance beyond this page without entering a
12 zip code?

13 A No.

14 Q Okay. And if we could flip to page 12 of the e-mail
15 address. And, Mr. Smith, if you could describe how the
16 consumer interacts with a page we're now seeing on
17 Defendant's Exhibit 8?

18 A This is very similar to the zip code page, but in this
19 case, the user would type in their e-mail address.

20 Q Um, and what else do they have to do to advance to the
21 next page?

22 A They would have to press the button down on the lower
23 right.

24 Q On the keyboard there?

25 A Yes.

1 Q Okay. If we could flip to the next page. Mr. Smith, if
2 you describe for us what page we're seeing here?

3 A This is the final page of the website before the "see my
4 results," this is where you'll see the TCPA language at the
5 bottom. And this is where we'll collect some contact
6 information from the consumer or the user.

7 Q Um, and if you could please identify for the Court the
8 TCPA language you're referring to?

9 A It's at the bottom of the screen right below the "see my
10 results" button -- excuse me.

11 Q And is that the section beginning -- by clicking the
12 button above, you express your understanding consent
13 electronically, via E-sign to the following?

14 A Yes, that is it.

15 Q And, Mr. Smith, the screen shot we're seeing here, is
16 this how it would appear to a -- would have appeared to the
17 consumer in October 2008 when they came to this page?

18 A In 2018? Yes.

19 Q 2018, that's right. Yes.

20 A Yes.

21 Q And before you took the screen shot, did you scroll up
22 or down on this Web page at all?

23 A No.

24 Q If you could just briefly describe for us how the
25 consumer interacts with this page?

1 A Okay. Once they hit this page, of course, they see what
2 you see here, they will click on the first name and type
3 their -- type their first name in. And as the consumer moves
4 to each field, the screen subsequently moves up to where the
5 active field is at the top of the screen.

6 Q And can you explain what you mean "the fields move up"?

7 A The whole screen, for example, if you type in the first
8 name and then click -- and click in the "enter the last name"
9 field, the screen will scroll up. All of the fields below
10 will be more towards the top.

11 Q And as the screen scrolls up, what happens to the TCPA
12 language displayed at the bottom of the screen?

13 A More and more of the TCPA language is displayed.

14 Q And it becomes more visible to the consumer?

15 A Yes.

16 Q And who created this -- this screen shot -- let me
17 restart -- who created the web page we're seeing right now?

18 A We did, SuitedConnector.

19 Q Did you draft all the content on this Web page?

20 A No.

21 Q Please explain.

22 A The content being the TCPA language is -- was drafted by
23 LowerMyBills.

24 Q And the asterisks next to the different fields first
25 name, last name, phone, street address, what do those

1 indicate?

2 A That indicates that that field is required.

3 Q And below the street address, there's a city, state
4 Colorado, and a zip code; do you see that?

5 A I do.

6 Q And where does that come from?

7 A That comes from the entry of the former zip code field,
8 earlier in the screens.

9 Q Is that your city and state?

10 A Yes.

11 Q Um, now, Mr. Smith, what happens if a consumer enters
12 their information on this page and does not click the "see my
13 results" button?

14 A Nothing happens. We will collect no information.

15 Q So if Ms. Hill entered her information on this page and
16 never clicked the "see my results" button, would you have
17 that information?

18 A No.

19 Q If we turn the page on the exhibit....

20 Mr. Smith, what are we looking at now?

21 A You were looking at a screen as if it is the final
22 screen. And if you scrolled or with your finger in the case
23 of a mobile device, scrolled the screen up, you will see the
24 TCPA language here.

25 Q So for this screen shot, just so it's clear, you just

1 swiped up on the device?

2 A Yes.

3 Q Okay. Um, in paragraph one, there's language that is in
4 blue font and underlined "LMB provider network," do you see
5 that?

6 A I do.

7 Q And what is that?

8 A That is a hyperlink that goes directly to LMB's provider
9 network page on their site.

10 Q And if a consumer clicked on that link in October of
11 2018, what would they have seen?

12 A They would have gone out to LMB site, and they would
13 have seen the provider network for LMB.

14 Q Okay. If you look at paragraph two, there's some
15 additional language there's in blue and underlined. Do you
16 see the terms of use there?

17 A I do.

18 Q And can you please explain why that is blue and
19 underlined?

20 A It's very similar to the LMB provider network. It's a
21 hyperlink that goes out to the LMB site and shows their terms
22 of use.

23 Q So if a consumer clicked on the terms of use in
24 October of 2018, they would have gone to the LMB website?

25 A Correct.

1 Q And they would have been displayed, the LMB terms of
2 use?

3 A Yes.

4 Q Mr. Smith, prior to this Web page being available --
5 this website being available to consumers in October of 2018,
6 did SuitedConnector take any steps to ensure the website
7 would appear -- would be visible to consumers, including the
8 TCPA disclosures?

9 A Yes, we do three things. One being, we use technology
10 that allows us to across all devices show websites in -- in
11 consistent fashion and even up to desktops, mobile devices
12 and IOS, everything, so that they all can behave the same.

13 The second thing that we do is, we have an
14 extensive quality and assurance process and a compliance team
15 that ensures that we showing the appropriate as per required
16 TCPA on the final screen before submission.

17 And then finally, we have the ability to validate
18 that when the information is submitted, that it is done so
19 with authentication -- a two-step authentication process.

20 Q And is there any other way that SuitedConnector confirms
21 the visibility of the website to consumers back in this time
22 period, October 2018?

23 A Yes, we use third party software -- two of them -- one
24 of them being Jornaya -- lead ID, process or -- or -- sorry
25 Jornaya software. And the second one is Active Prospect

1 trusted form.

2 Q Okay. Mr. Smith, I want to go back. You listed three
3 things, and I want to go to the first one, the technology --
4 what is the technology called?

5 A It's -- I'm forgetting what it is. It's reactive
6 technology.

7 Q Is that sometimes referred to as responsive technology?

8 A Yes, yes. Thank you. I'm sorry. It slipped.

9 Q And that technology was deployed on this
10 Web page in October of 2018?

11 A Yes, it's deployed across all of our sites.

12 Q You also mention some quality assurance testing that
13 SuitedConnector did. Could you please explain how that works
14 and what SuitedConnector does?

15 A Yes, every site that we develop -- every site that we
16 modify and when we are -- when we receive a notification that
17 a browser has been upgraded, we go through a quality
18 assurance process through our sites by -- we have a device
19 library which includes all mobile devices, windows devices
20 and desktops, and we certify each one that they are still in
21 compliance with the providers or our -- our requirements for
22 our providers.

23 Q And so does -- does SuitedConnector test the appearance
24 of this website on different browsers?

25 A Yes.

1 Q Did you test on different devices?

2 A Yes.

3 Q What type of devices was it tested on?

4 A This would have been tested on all IOS devices, Android
5 devices, and of course, desktop and Windows devices.

6 Q And if we go back one screen....

7 Would that testing -- that SuitedConnector data
8 also be looking for the visibility of the -- the TCPA
9 disclosure language?

10 A Yes, by requirement.

11 Q And what is that testing for exactly?

12 A That is to verify and validate that we have the
13 appropriate visibility of our TCPA language -- LMB's TCPA
14 language on the screen.

15 MR. TAYMAN: We can take the exhibit down.
16 Mr. Smith, you testified that the only way Ms. Hill would
17 have -- let me restart -- you testified the only way
18 SuitedConnector would have received Ms. Hill's information is
19 if she clicked on the "see my results" button; is that
20 correct?

21 THE WITNESS: That is correct.

22 BY MR. TAYMAN:

23 Q And how do you know that?

24 A Because I'm the one who designed and architected and led
25 the development.

1 Q The development of the website?

2 A Of the website and the back end that receives the
3 information from the website.

4 Q And could you please explain for us how that works?

5 A Yes, at a high level, there's some two-step process of
6 authentication. Number one, our back end requires the front
7 end to let us know who or what site it's coming from. That
8 would be step number one. Step number two is, there's a key
9 exchange to where if the front end has to have keys that the
10 back end knows about in order to be able to submit
11 information to that.

12 Q And what do you mean by "front end"?

13 A Front end is the web site that we've been talking about.

14 Q And what's the back end?

15 A Back end is the system of record where the database is.

16 Q In October of 2018, for the YourVA website -- let me
17 restart -- are you familiar with data scraping.

18 A Yes.

19 Q And what is your understanding of that?

20 A Data scraping is when people can scrape information off
21 a screen itself.

22 Q And in October of 2018 for the YourVASurvey website, did
23 SuitedConnector do any data scraping?

24 A No.

25 Q Did SuitedConnector obtain consumer information from any

1 third party?

2 A No.

3 Q From any public resource?

4 A No.

5 Q Did SuitedConnector obtain consumer data for this
6 website in October of 2018 from any source, other than the
7 consumer pressing the "see my results" button after entering
8 their information?

9 A No.

10 Q And when the data hits the back end, what happens then?

11 A Once the data hits the back end, it is then sent out to
12 our providers that the information on the TCPA is provided --
13 and in this case, it's LMB.

14 Q If we could show Defendant's Exhibit 7.... Mr. Smith do
15 you recognize Defendant's Exhibit 7?

16 A Yes.

17 Q What is it?

18 A It is the database record that we received on the back
19 end from the front end for Ms. Hill.

20 Q And who -- who created this document?

21 A I did.

22 Q And how did you do that?

23 A I pulled it directly from our database.

24 Q And is the data in the database kept by SuitedConnector
25 in the ordinary course of its business?

1 A Yes.

2 Q And is the data we're seeing here in Exhibit 7, was this
3 created at the date and time Ms. Hill submitted her
4 information October 2018?

5 A Yes.

6 MR. TAYMAN: Your Honor, move to admit Defendant's
7 Exhibit 7 into the record?

8 MR. HEDIN: No objection.

9 THE COURT: It's admitted.

10 (Whereupon, Defense's Exhibit 7 is admitted hereto.)

11 BY MR. TAYMAN:

12 Q Mr. Smith, if you could just explain what we're seeing
13 in this document?

14 A At the top, you'll notice the first name, last name,
15 e-mail, phone number, address, city, state, zip code. Those
16 are the pieces of contact information that we described
17 earlier when we were collecting those. We collect those from
18 the website we talked about earlier.

19 Q And whose name is this data for?

20 A Amanda Hill.

21 Q And what phone number is submitted here in Exhibit 7?

22 A The actual number?

23 Q Yes.

24 A (951) 813-9785.

25 Q And this contact information, the name, phone number,

1 address, again, if you just remind us how SuitedConnector
2 obtained that?

3 A It was collected from the website on the front and
4 handed to the back after authentication.

5 Q And that's after the "see my results button" was
6 pressed?

7 A That's correct.

8 Q Going down a few rows, there's a row "military service,"
9 what does that row indicate?

10 A That indicates if you'll recall the website on the first
11 page, there's a question asked about if you served in the
12 military, "yes" or "no," and based on the answer to that
13 question, that's the data that would be in this military
14 service field.

15 Q If we go down another five rows or so, there's a field
16 IP address; do you see that?

17 A I do.

18 Q And what does that field reflect?

19 A That IP address is a field reflected of the IP address
20 that the device that sent the information to was running on
21 at that point in time.

22 Q And whose device would that be in this instance?

23 A That would be Ms. Hill's.

24 Q And where's the field below that, "user agent" reflect?

25 A The "user agent" reflects the type of device on the

1 operating system that was on the device at the time and some
2 assemblies that the device uses for web browsing experience.

3 Q And based on the data there, what type of device was
4 used to submit this data?

5 A It's a pixel device with an Android OS.

6 Q Um, now, Mr. Smith, Ms. Hill said that she used a
7 Samsung Galaxy device. Is a pixel a Samsung Galaxy device?

8 A No.

9 Q If we scroll down a few more lines, do you see the row
10 site name?

11 A I do.

12 Q What does that reflect?

13 A That reflects the site that it came from.

14 Q And which site is that in this instance.

15 A LMB.YourVASurvey.info.

16 Q In the row immediately below that TCPA type, what does
17 that indicate?

18 A That information is a tag that tells us what TCPA was
19 disclosed on the website.

20 Q And so what does that mean here?

21 A In this case, we tag that as LMB which we know that the
22 LowerMyBills TCPA language was shown on the website.

23 Q And if we scroll towards about three quarters the way
24 down the document on this first page, there's a field
25 universal lead ID; do you see that?

1 A I do.

2 Q And what does that reflect?

3 A There's a token given to us by our lead ID product from
4 Jornaya in which that if the site is validated and
5 authenticated, we will receive that universally ID.

6 Q And what do you mean by "validated and authenticated"?

7 A "Validated and authenticated" means the user was
8 actually shown and displayed the appropriate TCPA, and it's
9 the form that is required by Jornaya to accept.

10 Q And if the display did not meet the Jornaya standards,
11 would you have received this lead ID?

12 A No.

13 Q And what does the row below "trusted form cert" URL
14 reflect?

15 A The trusted form is an additional third party software
16 that we put on all of our sites. This URL gives us the
17 ability to review a play by play or a video image of the
18 client going through our site.

19 Q And who's the company that offers the "trusted form"
20 app. software?

21 A Active Prospect.

22 Q And scrolling down a few more rows, what are we seeing
23 in the created date and modified date fields?

24 A The created date field is a time stamp with date and
25 time of when the record actually was recorded in our

1 database.

2 Q And how does that get recorded in the database?

3 A Once the front end authenticates to the back end, after
4 the "see my results" button is clicked, then the record is
5 put into the database.

6 Q And what is the modified date?

7 A Modified date is when we send that along to our partner,
8 in this case, LMB.

9 MR. TAYMAN: We can take down the exhibit.

10 BY MR. TAYMAN:

11 Q Mr. Smith, you mentioned the active forms trusted --
12 sorry -- you mentioned the Active Prospect Trusted Forms
13 software. Can you explain at a high level what that is?

14 A Yes, again, from -- it's a third party software that we
15 use, and -- and it activates as soon as a person comes onto
16 our site; and it records video of interaction with that site.

17 Q And is that --

18 THE COURT: Excuse me -- we're going to take a
19 recess now -- and, Counsel, when we come back after the
20 criminal matter, I really want you to wrap it up. You guys
21 both said -- everybody said 20 minutes a witness, and you
22 took an hour nearly with your first witness and we're just
23 going on and on -- so let's wrap it up when we get back,
24 okay?

25 (Recess.)

C E R T I F I C A T E

AMANDA HILL

:

vs.

: No. CV 19-00163-FMO

QUICKEN LOANS, INC.

:

I, MARIA BUSTILLOS, OFFICIAL COURT REPORTER, IN AND FOR THE
UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753,
TITLE 28, UNITED STATES CODE, THE FOREGOING IS A TRUE AND
CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED
PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE
TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS
OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.
FEES CHARGED FOR THIS TRANSCRIPT, LESS ANY CIRCUIT FEE
REDUCTION AND/OR DEPOSIT, ARE IN CONFORMANCE WITH THE
REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

/s/

//

MARIA R. BUSTILLOS
OFFICIAL REPORTER

DATE

\$	20 [4] - 20:17, 47:18, 47:20, 77:21	16:1 , 16:5 , 57:7	8:12 [1] - 48:5	address [17] - 11:14, 18:9, 20:18, 20:19, 26:6, 31:10, 35:1, 42:19, 63:15, 63:19, 65:25, 66:3, 73:15, 74:1, 74:16, 74:19
\$2633 [1] - 40:22	2000 [1] - 2:17	415)766-3534 [1] - 2:7	9	admission [9] - 12:13, 15:21, 16:1, 16:2, 24:10, 29:11, 29:23, 32:10, 33:1
/	20036 [1] - 2:21	43 [1] - 33:25	9 [1] - 63:4	admit [2] - 62:9, 73:6
/S [1] - 78:22	2008 [1] - 64:17	4455 [1] - 1:23	90 [2] - 49:18, 49:21	admitted [16] - 12:16, 15:23, 15:24, 16:4, 16:5, 24:12, 24:13, 30:10, 30:11, 32:23, 33:3, 33:4, 62:12, 62:13, 73:9, 73:10
1	2015 [1] - 12:2	47 [3] - 21:1, 21:4, 40:18	90012 [1] - 1:24	advance [2] - 63:11, 63:20
1 [22] - 4:5, 15:7, 15:21, 15:24, 16:7, 16:11, 20:17, 20:22, 26:3, 27:10, 27:18, 40:18, 42:13, 42:14, 45:6, 45:9, 45:12, 53:14, 53:15, 54:25, 56:21, 57:7	2016 [1] - 21:14	48 [1] - 21:7	92 [1] - 26:17	advertise [1] - 8:17
10 [1] - 20:23	2018 [53] - 12:20, 13:14, 13:23, 14:2, 16:17, 16:23, 16:25, 17:1, 17:10, 19:6, 20:5, 20:23, 21:19, 22:12, 24:7, 25:17, 26:9, 26:14, 26:25, 27:2, 27:20, 37:19, 37:22, 39:11, 41:16, 42:8, 42:15, 44:18, 45:3, 45:9, 45:18, 46:9, 48:18, 49:25, 50:5, 50:8, 50:14, 52:9, 52:19, 60:25, 61:22, 62:4, 64:18, 64:19, 67:11, 67:24, 68:5, 68:22, 69:10, 71:16, 71:22, 72:6, 73:4	48009 [1] - 2:17	92626 [1] - 2:11	advertising [2] - 10:3, 10:21
102DA [1] - 27:5	2019 [3] - 1:18, 6:1, 50:14	49 [1] - 21:9	94104 [1] - 2:7	affected [1] - 27:8
10:21 [1] - 16:17	202)346-4000 [1] - 2:22	4:00 [1] - 44:10	951 [1] - 73:24	AFFL [1] - 17:18
10th [11] - 16:17, 16:25, 17:4, 17:5, 17:10, 18:7, 21:19, 22:6, 23:6, 27:2, 31:7	21 [1] - 21:21	5	A	afternoon [8] - 6:8, 6:10, 6:15, 6:18, 6:20, 37:10, 37:11, 58:19
11 [1] - 41:16	213 [1] - 1:24	5 [11] - 21:10, 29:1, 29:3, 29:11, 30:6, 32:13, 37:13, 41:13, 55:24, 57:11	a.m [1] - 48:5	agent [2] - 74:24, 74:25
11th [2] - 42:8, 45:3	22nd [1] - 48:5	50 [3] - 3:11, 9:15, 21:9	Abb [1] - 6:8	ago [2] - 9:5, 50:1
12 [3] - 8:22, 16:23, 63:14	24 [2] - 4:7, 18:9	51 [1] - 21:12	ABBAS [1] - 2:9	agree [2] - 25:13, 41:17
120 [1] - 49:21	245 [1] - 2:10	54 [3] - 3:13, 4:8, 21:15	abbreviation [1] - 17:19	agreeing [1] - 26:1
12254 [1] - 1:22	248-864-4000 [1] - 2:18	55 [1] - 3:12	ABC [1] - 17:6	agreement [3] - 14:3, 55:8, 55:15
12:12 [1] - 16:23	25th [1] - 12:2	56 [1] - 16:21	ability [3] - 40:14, 68:17, 76:17	ahead [9] - 7:7, 33:3, 37:5, 42:25, 44:15, 47:21, 49:22, 54:21, 58:16
12th [15] - 17:1, 17:5, 17:6, 22:12, 24:2, 26:4, 26:9, 26:25, 27:20, 31:7, 31:9, 37:21, 45:14, 48:18, 52:9	26293 [1] - 47:25	58 [2] - 3:15, 27:24	able [3] - 19:23, 36:2, 71:10	algorithm [1] - 9:25
13 [1] - 18:8	27 [1] - 18:9	59 [2] - 22:19, 46:1	ABOVE [1] - 78:15	alleged [1] - 18:17
1400 [1] - 2:6	28 [1] - 78:13	5A [7] - 30:7, 30:10, 32:24, 33:2, 37:14, 37:18, 41:19	ABOVE-ENTITLED [1] - 78:15	allows [4] - 28:20, 34:21, 51:17, 68:10
145 [1] - 40:20	28724 [1] - 18:5	5B [6] - 4:9, 30:11, 38:1, 38:2, 42:4, 42:21	accept [1] - 76:9	Am [6] - 6:5, 15:6, 18:18, 23:16, 60:7, 73:20
15 [6] - 4:5, 46:18, 46:20, 47:9, 48:1, 48:2	29 [1] - 18:11	6	access [3] - 11:10, 21:5, 43:13	AMANDA [3] - 1:7, 2:4, 78:5
15-year [1] - 35:3	2:03 [1] - 6:3	6 [6] - 4:10, 32:10, 33:1, 33:4, 40:12, 47:24	accessed [1] - 48:18	amended [1] - 47:18
16 [8] - 1:18, 4:6, 6:1, 41:20, 42:17, 44:23, 44:24, 47:24	3	60 [2] - 22:25, 49:18	accesses [1] - 14:23	AmeriSave [1] - 21:22
18 [1] - 18:9	3 [6] - 11:22, 11:24, 12:13, 12:18, 14:11, 25:7	62 [1] - 4:11	accordingly [1] - 27:16	amount [1] - 16:18
19 [4] - 46:14, 46:24, 47:3, 47:13	3... [1] - 11:21	64 [1] - 45:23	accurate [2] - 38:18, 42:10	AND [3] - 78:10, 78:13, 78:15
19-00163-FMO [3] - 1:10, 6:5, 78:6	30 [4] - 4:8, 4:9, 49:17, 49:18	69.0.3497 [1] - 21:8	accurately [2] - 16:7, 39:2	AND/OR [1] - 78:19
1900 [1] - 2:21	33 [1] - 4:10	6F7A [1] - 31:4	acquired [1] - 9:5	Android [4] - 21:15, 61:16, 70:4, 75:5
1ST [1] - 1:23	344 [1] - 2:16	7	acquire [1] - 8:14	ANGELES [3] - 1:17, 1:24, 6:1
2	350 [1] - 1:23	7 [9] - 3:5, 3:11, 4:12, 18:1, 72:15, 73:2, 73:7, 73:10, 73:21	action [2] - 40:2, 41:1	answer [3] - 50:7, 50:16, 74:12
2 [12] - 4:7, 23:15, 23:17, 24:10, 24:13, 24:15, 25:10, 25:15, 25:22, 31:18, 57:12	35312 [1] - 34:17	7... [1] - 72:14	actions [1] - 30:19	ANY [1] - 78:18
	36 [1] - 18:11	73 [2] - 4:12, 28:10	activate [1] - 7:12	anyway [2] - 43:19, 44:1
	37 [1] - 3:13	75 [1] - 27:22	activated [3] - 57:8, 57:10, 57:15	apart [1] - 55:14
	3:00 [2] - 43:17, 43:23	753 [1] - 78:12	activates [1] - 77:15	APC [1] - 2:9
	4	8	Active [5] - 43:3, 43:5, 43:7, 68:25, 77:12	
	4 [6] - 2:6, 4:6, 12:25,	8 [6] - 4:11, 18:1, 61:6, 62:10, 62:13, 63:17	active [3] - 65:5, 76:21, 77:11	
		800)400-6808 [1] - 2:12	actively [1] - 40:3	
		813-9785 [1] - 73:24	activities [2] - 13:11, 30:25	
		891 [1] - 41:25	activity [2] - 33:19, 34:10	
		894-2739 [1] - 1:24	actual [6] - 48:19, 53:22, 53:23, 55:13, 73:22	
			ad [2] - 9:23, 10:22	
			addition [2] - 19:16, 21:24	
			additional [2] - 67:15, 76:15	

<p>app [1] - 76:20 appear [2] - 64:16, 68:7 appearance [2] - 6:6, 69:23 appeared [1] - 64:16 appropriate [3] - 68:15, 70:13, 76:8 Arbitration [1] - 25:11 architected [1] - 70:24 archiving [1] - 12:7 ARE [1] - 78:19 assemblies [1] - 75:2 assessed [1] - 18:11 assessment [1] - 26:7 assisting [1] - 6:21 assuming [1] - 42:9 assurance [4] - 30:25, 68:14, 69:12, 69:18 asterisks [1] - 65:24 AT [1] - 6:3 Atlas [1] - 21:2 attached [3] - 32:14, 37:24, 44:20 attachment [1] - 41:15 attempt [1] - 49:17 attorneys [1] - 6:21 authenticated [3] - 76:5, 76:6, 76:7 authenticates [1] - 77:3 authenticating [1] - 29:12 authentication [4] - 68:19, 71:6, 74:4 automated [1] - 57:20 available [3] - 34:3, 68:4, 68:5 AVENUE [2] - 2:10, 2:16 aware [1] - 50:11</p>	<p>10:4, 39:13, 55:15, 56:18, 57:1 beyond [1] - 63:11 binder [3] - 41:20, 46:15, 47:15 BIRMINGHAM [1] - 2:17 bit [1] - 60:1 black [2] - 24:15, 41:20 blue [3] - 67:4, 67:15, 67:18 bold [1] - 25:11 bottom [6] - 23:25, 24:1, 31:22, 64:5, 64:9, 65:12 box [5] - 53:15, 53:17, 53:21, 54:4, 54:15 break [1] - 44:17 briefing [1] - 18:17 briefly [4] - 59:10, 60:14, 63:6, 64:24 bringing [3] - 19:14, 19:18, 20:2 brought [3] - 34:23, 35:4, 46:9 browsed [1] - 61:17 browser [7] - 21:4, 21:5, 27:1, 27:4, 27:5, 27:9, 69:17 browsers [1] - 69:24 browsing [1] - 75:2 build [1] - 39:14 built [7] - 14:17, 15:3, 27:13, 34:20, 35:14, 41:11, 54:11 bullet [1] - 56:13 bunch [2] - 10:22, 23:25 business [11] - 8:15, 12:10, 13:11, 14:3, 15:18, 19:9, 19:16, 24:4, 24:25, 62:7, 72:25 BUSTILLOS [3] - 1:21, 78:10, 78:23 button [40] - 14:14, 14:16, 14:18, 14:24, 22:7, 22:11, 24:15, 24:19, 26:18, 35:4, 35:11, 36:2, 36:3, 40:4, 41:2, 41:7, 53:8, 55:4, 55:14, 56:21, 57:5, 57:6, 57:9, 57:13, 57:15, 57:17, 57:24, 57:25, 60:17, 61:3, 61:4, 63:22, 64:10, 64:12, 66:13, 66:16, 70:19, 72:7, 74:5, 77:4 BY [30] - 2:5, 2:9, 2:15, 2:20, 3:11, 3:13, 3:15, 7:21, 12:17, 16:6, 24:14, 30:12, 33:8, 37:12, 38:15, 39:8, 39:15, 44:16,</p>	<p>#873 45:1, 47:23, 49:23, 50:22, 52:3, 54:23, 55:23, 58:18, 62:14, 70:22, 73:11, 77:10 C C.S.R [1] - 1:22 CA [2] - 2:7, 2:11 cabinet [1] - 61:15 Calculate [3] - 24:16, 26:23, 53:11 calculate [9] - 25:24, 34:21, 35:10, 35:16, 36:2, 52:11, 56:22, 57:14, 57:24 calculation [1] - 35:1 CALIFORNIA [5] - 1:2, 1:17, 1:24, 6:1, 78:12 campaign [13] - 22:21, 23:10, 26:10, 45:17, 45:19, 45:20, 45:21, 45:23, 49:4, 49:5, 49:7, 49:11 capital [2] - 25:11, 25:12 capture [9] - 22:1, 26:1, 28:13, 40:10, 50:14, 51:9, 51:17, 51:21 captured [2] - 16:8, 42:6 captures [2] - 15:15, 39:17 capturing [6] - 28:17, 28:19, 36:18, 36:20, 36:23, 54:11 case [13] - 15:6, 21:6, 41:9, 49:10, 60:12, 61:1, 61:16, 62:24, 63:19, 66:22, 72:13, 75:21, 77:8 CASE..... [1] - 3:5 catch [2] - 54:15, 54:16 catches [1] - 54:14 CENTER [1] - 2:6 center [2] - 56:9, 56:11 centers [1] - 30:24 CENTRAL [2] - 1:2, 78:11 cert [1] - 76:13 certain [3] - 52:7, 52:13, 60:2 certify [1] - 69:20 CERTIFY [1] - 78:12 cetera [1] - 21:8 change [5] - 34:12, 40:19, 40:24, 52:21, 62:3 changed [5] - 40:21, 53:6, 61:21, 61:24,</p>	<p>62:2 changes [2] - 40:16, 53:2 characterization [1] - 40:6 characters [2] - 17:17, 22:19 charge [1] - 62:15 CHARGED [1] - 78:18 checked [1] - 54:16 chief [3] - 58:24, 58:25, 59:7 choose [1] - 34:20 chosen [1] - 34:14 Chrome [3] - 21:6, 21:7, 27:6 CIRCUIT [1] - 78:18 city [3] - 66:3, 66:9, 73:15 claims [3] - 8:20, 10:25, 35:9 clear [1] - 66:25 Click [1] - 18:15 click [15] - 14:14, 14:24, 22:6, 25:3, 26:23, 32:3, 34:21, 34:22, 36:2, 43:1, 53:8, 65:2, 65:8, 66:12 clicked [24] - 22:11, 23:20, 25:5, 32:7, 35:10, 36:1, 40:3, 41:8, 46:10, 52:10, 55:14, 56:22, 57:5, 57:9, 57:14, 57:23, 60:18, 61:2, 61:4, 66:16, 67:10, 67:23, 70:19, 77:4 clicking [5] - 24:18, 35:16, 41:2, 57:6, 64:11 clicks [2] - 10:21, 14:15 client [9] - 9:8, 9:13, 11:3, 20:13, 22:2, 22:3, 28:3, 28:6, 76:18 clients [22] - 8:14, 9:11, 10:1, 10:5, 13:7, 14:22, 17:8, 19:12, 19:15, 19:18, 19:23, 21:23, 22:22, 23:13, 27:23, 28:15, 43:6, 49:1, 49:9, 54:9, 56:19, 57:1 CODE [1] - 78:13 code [29] - 18:4, 28:11, 28:24, 28:25, 36:17, 38:18, 38:20, 40:9, 41:3, 51:1, 51:3, 51:5, 51:8, 51:11, 51:14, 51:15, 51:19, 52:5, 52:12, 58:1, 63:5, 63:8, 63:9, 63:12, 63:18, 66:4, 66:7, 73:15</p>	<p>coded [1] - 18:5 codes [3] - 23:3, 23:25, 41:3 collect [3] - 64:5, 66:14, 73:17 collected [2] - 20:19, 74:3 collecting [2] - 18:25, 73:17 collection [1] - 30:25 collects [1] - 14:18 color [1] - 25:1 Colorado [1] - 66:4 colors [1] - 33:21 column [4] - 17:7, 21:25, 28:10, 46:1 columns [4] - 16:18, 17:4, 17:5, 27:25 combination [1] - 23:2 coming [1] - 71:7 comment [1] - 20:9 communicate [3] - 10:16, 20:1, 25:25 companies [3] - 56:4, 56:12 Companies [1] - 30:22 company [6] - 9:6, 11:2, 36:16, 43:3, 59:12, 76:19 comparison [1] - 50:15 complaint [3] - 47:17, 47:18, 56:15 compliance [7] - 29:5, 30:14, 42:3, 56:1, 56:14, 68:14, 69:21 compliant [1] - 56:5 composite [2] - 41:21, 46:14 computer [3] - 43:1, 43:13, 43:20 CONFERENCE [2] - 78:17, 78:20 confidence [1] - 53:4 confirm [1] - 42:16 confirms [1] - 68:20 CONFORMANCE [2] - 78:16, 78:19 connect [4] - 10:18, 14:21, 59:13, 59:25 connected [3] - 21:18, 27:19, 55:11 connection [5] - 10:4, 22:5, 39:18, 51:16, 57:1 consent [19] - 14:12, 19:17, 19:19, 19:20, 19:22, 20:2, 20:16, 24:19, 24:24, 26:1, 31:1, 53:12, 53:22, 56:21, 56:23, 57:6, 57:19, 64:12 Consent [1] - 53:17 consented [2] - 39:25, 53:18</p>
--	---	---	--	---

<p>consistent ^[1] - 68:11 constantly ^[1] - 52:24 construction ^[1] - 8:12 consumer ^[46] - 9:19, 9:22, 9:25, 10:5, 10:21, 10:25, 14:12, 14:15, 14:18, 14:21, 14:23, 14:24, 18:2, 18:25, 19:24, 20:11, 22:2, 23:11, 25:25, 26:11, 28:17, 30:19, 31:15, 34:23, 35:4, 39:24, 40:2, 41:2, 45:24, 49:8, 57:1, 57:23, 62:20, 62:22, 63:16, 64:6, 64:17, 64:25, 65:3, 65:14, 66:11, 67:10, 67:23, 71:25, 72:5, 72:7 consumer's ^[4] - 31:1, 32:2, 39:18, 56:10 consumers ^[12] - 8:18, 9:11, 14:19, 19:11, 19:14, 20:14, 22:21, 60:2, 62:15, 68:5, 68:7, 68:21 contact ^[3] - 64:5, 73:16, 73:25 contacted ^[2] - 31:1, 57:20 contained ^[1] - 25:15 content ^[2] - 65:19, 65:22 contents ^[1] - 38:5 continue ^[2] - 19:16, 44:14 continues ^[1] - 47:10 contrast ^[1] - 50:15 control ^[1] - 62:1 copy ^[4] - 11:22, 26:11, 29:25, 32:6 CORRECT ^[1] - 78:14 correct ^[23] - 36:22, 37:20, 37:22, 38:1, 38:11, 39:7, 40:22, 41:16, 42:1, 42:4, 42:8, 45:6, 45:10, 45:23, 46:22, 47:4, 47:7, 48:23, 50:1, 67:25, 70:20, 70:21, 74:7 correctly ^[1] - 16:24 corresponds ^[2] - 42:16, 45:4 COSTA ^[1] - 2:11 Counsel ^[6] - 49:22, 52:16, 54:18, 55:18, 58:4, 77:19 counsel ^[5] - 6:6, 18:17, 29:13, 31:21, 50:23 couple ^[4] - 34:22, 50:2, 52:18, 55:19 course ^[8] - 12:10, 13:11, 15:18, 24:4,</p>	<p>62:7, 65:1, 70:5, 72:25 court ^[1] - 33:7 COURT ^[54] - 1:1, 1:21, 6:3, 6:14, 6:23, 7:1, 7:7, 7:14, 7:18, 12:14, 12:16, 15:23, 16:4, 24:12, 29:17, 30:1, 30:5, 30:8, 32:23, 33:3, 36:7, 36:12, 36:16, 36:20, 36:23, 37:2, 37:5, 43:14, 43:16, 43:23, 44:9, 49:15, 49:22, 51:11, 51:22, 52:2, 52:16, 52:18, 53:1, 53:10, 54:2, 54:14, 54:18, 54:21, 55:18, 55:21, 58:4, 58:7, 58:16, 62:12, 73:9, 77:18, 78:10, 78:11 Court ^[3] - 29:25, 58:20, 64:7 COURTHOUSE ^[1] - 1:22 courtroom ^[1] - 44:1 COURTROOM ^[2] - 6:4, 58:12 cover ^[2] - 29:3, 30:14 created ^[7] - 61:12, 65:16, 65:17, 72:20, 73:3, 76:23, 76:24 creates ^[1] - 51:16 creation ^[1] - 39:23 credit ^[2] - 18:11, 26:7 criminal ^[4] - 43:17, 43:25, 44:5, 77:20 critical ^[2] - 53:13, 53:20 CROSS ^[2] - 3:8, 37:9 CROSS-EXAMINATION ^[1] - 37:9 crux ^[1] - 54:6 CUNNINGHAM ^[5] - 6:20, 7:12, 7:17, 30:7, 36:9 Cunningham ^[1] - 6:21 current ^[1] - 18:12 cut ^[1] - 35:19 cutoff ^[1] - 49:19 CV ^[3] - 1:10, 6:5, 78:6</p>	<p>#874 22:10, 22:14, 23:24, 26:24, 28:2, 28:20, 30:22, 30:23, 31:5, 39:21, 42:9, 42:16, 45:4, 45:9, 45:14, 53:19, 54:24, 55:10, 55:11, 70:7, 71:17, 71:20, 71:23, 72:5, 72:10, 72:11, 72:24, 73:2, 73:19, 74:13, 75:3, 75:4 database ^[8] - 59:6, 71:15, 72:18, 72:23, 72:24, 77:1, 77:2, 77:5 DATE ^[1] - 78:23 date ^[12] - 16:16, 16:22, 45:3, 53:18, 53:23, 73:3, 76:23, 76:24, 77:6, 77:7 David ^[1] - 6:12 DAVID ^[1] - 2:5 days ^[5] - 11:9, 49:17, 49:21, 50:1, 50:3 DB5 ^[1] - 15:15 DC ^[1] - 2:21 dealing ^[1] - 54:6 DECEMBER ^[2] - 1:18, 6:1 decided ^[1] - 7:5 declaration ^[14] - 29:11, 29:15, 29:25, 30:2, 32:11, 32:15, 32:25, 37:24, 38:3, 40:25, 41:13, 41:18, 41:22, 44:20 DEF ^[1] - 17:6 DEFENDANT ^[1] - 37:11 defendant ^[2] - 6:16, 6:19 Defendant's ^[11] - 42:4, 42:21, 45:8, 45:12, 61:6, 61:7, 62:10, 63:17, 72:14, 72:15, 73:6 defendant's ^[8] - 37:13, 37:25, 42:12, 42:14, 45:5, 53:15, 54:25, 55:24 DEFENDANTS ^[1] - 2:14 defendants ^[1] - 7:1 Defendants ^[1] - 1:13 Defense's ^[8] - 15:24, 16:5, 24:13, 30:10, 30:11, 33:4, 62:13, 73:10 DEFENSE'S ^[5] - 3:5, 3:8, 4:3, 7:11, 58:11 depict ^[1] - 39:17 depicted ^[1] - 44:19 depiction ^[1] - 61:11 deployed ^[3] - 40:8, 69:9, 69:11 Depo ^[1] - 21:22</p>	<p>DEPOSIT ^[1] - 78:19 DEPUTY ^[2] - 6:4, 58:12 describe ^[8] - 8:15, 18:2, 21:9, 39:2, 43:5, 63:15, 64:2, 64:24 described ^[4] - 40:25, 53:7, 60:1, 73:16 designed ^[1] - 70:24 desktop ^[1] - 70:5 desktops ^[2] - 68:11, 69:20 details ^[1] - 9:18 determine ^[1] - 48:9 determining ^[1] - 35:2 develop ^[1] - 69:15 developed ^[1] - 59:24 development ^[7] - 59:2, 59:4, 59:5, 59:6, 70:25, 71:1 device ^[23] - 20:22, 21:9, 21:11, 21:16, 27:1, 27:4, 27:9, 34:7, 61:15, 61:16, 66:23, 67:1, 69:18, 74:20, 74:22, 74:25, 75:1, 75:2, 75:3, 75:5, 75:7 Device ^[1] - 21:2 devices ^[9] - 68:10, 68:11, 69:19, 70:1, 70:3, 70:4, 70:5 difference ^[2] - 27:4, 27:5 differences ^[2] - 50:10, 50:13 different ^[11] - 9:19, 17:3, 17:4, 18:24, 25:1, 26:5, 27:23, 39:6, 65:24, 69:24, 70:1 digital ^[1] - 21:10 dimensions ^[1] - 21:9 direct ^[3] - 9:21, 9:22, 22:18 DIRECT ^[3] - 3:8, 7:20, 58:17 directed ^[1] - 48:17 directly ^[6] - 17:12, 22:15, 24:7, 25:24, 67:8, 72:23 disclaimer ^[1] - 57:18 disclosed ^[1] - 75:19 disclosure ^[4] - 31:11, 39:24, 57:18, 70:9 disclosures ^[9] - 11:20, 14:6, 25:23, 26:2, 31:14, 31:16, 56:13, 62:3, 68:8 discussed ^[1] - 18:15 discussing ^[1] - 44:17 display ^[5] - 11:16, 13:25, 21:10, 60:23, 76:10 displayed ^[11] - 12:22,</p>	<p>13:21, 14:6, 14:8, 14:12, 25:16, 63:1, 65:12, 65:13, 68:1, 76:8 DISTRICT ^[5] - 1:1, 1:2, 1:5, 78:11 DIVISION ^[1] - 1:3 DO ^[1] - 78:12 document ^[21] - 12:3, 12:9, 13:5, 13:8, 13:10, 13:13, 13:17, 13:18, 13:19, 13:21, 15:9, 25:6, 25:20, 43:1, 46:23, 61:12, 72:20, 73:13, 75:24 documents ^[1] - 14:1 dollar ^[1] - 40:21 done ^[3] - 7:15, 49:5, 68:18 down ^[11] - 35:19, 35:21, 63:22, 64:22, 70:15, 74:8, 74:15, 75:9, 75:24, 76:22, 77:9 draft ^[1] - 65:19 drafted ^[1] - 65:22 drive ^[1] - 9:23 drives ^[1] - 10:22 during ^[2] - 13:18, 56:10 duties ^[1] - 8:10</p>
	<p style="text-align: center;">D</p>			<p style="text-align: center;">E</p>
	<p>D1 ^[1] - 2:11 DA ^[2] - 21:2 daily ^[1] - 38:22 data ^[49] - 10:24, 12:8, 15:10, 15:13, 15:14, 16:8, 17:11, 18:18, 18:20, 19:2, 19:5, 19:17, 20:4, 20:7, 20:21, 21:4, 22:3,</p>			<p>E-Finance ^[1] - 57:19 e-mail ^[5] - 11:14, 19:24, 63:14, 63:19, 73:15 E-sign ^[2] - 24:20, 64:13 ECF ^[3] - 47:10, 47:18, 47:20 effect ^[2] - 39:24, 40:1 either ^[1] - 57:3 electronic ^[1] - 40:4 electronically ^[4] - 14:20, 24:20, 24:25, 64:13 EMBARCADERO ^[1] - 2:6 employed ^[3] - 8:1, 8:21, 58:21 end ^[23] - 10:23, 39:21, 40:15, 40:17, 59:3, 59:6, 63:3, 71:2, 71:6, 71:7, 71:9, 71:10, 71:12, 71:13, 71:14, 71:15, 72:10, 72:11, 72:19, 77:3 ending ^[1] - 41:25 engage ^[4] - 10:3, 14:20, 53:8, 56:25 engaged ^[2] - 26:16, 35:6</p>

engine [12] - 9:24,
10:4, 14:4, 14:21,
15:6, 15:12, 15:16,
35:6, 35:8, 56:24,
57:7, 57:10
ensure [2] - 56:18,
68:6
ensures [1] - 68:15
enter [1] - 65:8
entered [3] - 26:14,
29:15, 66:15
entering [2] - 63:11,
72:7
enters [1] - 66:11
entire [1] - 47:3
ENTITLED [1] - 78:15
entry [1] - 66:7
ESQ [5] - 2:5, 2:5,
2:10, 2:16, 2:20
et [1] - 21:8
event [4] - 30:19,
30:20, 31:12, 48:21
events [1] - 56:8
evidence [2] - 29:15,
55:14
evidences [1] - 41:7
EVIDENTIARY [1] -
1:16
evidentiary [1] - 6:23
evolved [1] - 52:23
exact [2] - 49:20,
53:18
exactly [1] - 70:11
EXAMINATION [6] -
7:20, 37:9, 50:21,
54:22, 55:22, 58:17
example [4] - 23:14,
40:1, 40:3, 65:7
exchange [3] - 55:10,
55:12, 71:9
excluded [2] - 7:3, 7:6
excuse [6] - 40:13,
43:2, 44:18, 46:1,
64:10, 77:18
excused [1] - 58:7
executes [1] - 51:16
Exhibit [79] - 11:21,
11:22, 11:24, 12:13,
12:18, 12:25, 14:11,
15:7, 15:21, 15:24,
16:1, 16:5, 16:7,
16:11, 20:17, 20:22,
23:15, 23:17, 24:10,
24:13, 24:15, 25:7,
25:22, 26:3, 27:10,
27:18, 29:1, 29:3,
29:11, 30:6, 30:10,
30:11, 31:18, 32:10,
32:24, 33:1, 33:4,
37:13, 37:25, 38:2,
40:12, 41:13, 41:18,
41:19, 41:20, 42:4,
42:12, 42:14, 42:17,
42:21, 44:23, 44:24,
45:6, 45:9, 45:12,
46:14, 46:24, 47:13,

53:14, 53:15, 54:25,
55:24, 56:21, 57:11,
57:12, 61:6, 61:7,
62:10, 62:13, 62:18,
63:17, 72:14, 72:15,
73:2, 73:7, 73:10,
73:21
exhibit [21] - 7:14,
23:25, 30:6, 31:5,
32:13, 32:15, 32:17,
41:22, 42:2, 42:15,
43:11, 43:20, 44:22,
45:13, 46:14, 46:16,
46:19, 47:14, 63:4,
70:15, 77:9
exhibit... [1] - 66:19
exhibits [2] - 7:15,
7:18
existed [1] - 50:4
existence [1] - 12:19
existing [1] - 26:11
experience [5] - 8:13,
18:3, 39:23, 45:24,
75:2
explain [16] - 17:3,
33:9, 33:22, 34:13,
59:10, 59:23, 60:9,
60:14, 62:19, 65:6,
65:21, 67:18, 69:13,
71:4, 73:12, 77:13
explained [1] - 63:6
explicit [1] - 34:3
express [2] - 24:19,
64:12
extensive [1] - 68:14

F

fact [3] - 41:5, 41:6,
41:7
facts [1] - 56:10
failed [1] - 16:2
fair [3] - 32:22, 40:6,
41:2
familiar [11] - 38:4,
38:23, 39:16, 43:2,
43:7, 47:5, 47:6,
59:15, 60:6, 61:7,
71:17
fashion [1] - 68:11
fast [2] - 40:13, 40:15
fast-forward [2] -
40:13, 40:15
features [1] - 61:24
FEE [1] - 78:18
FEES [1] - 78:18
FERNANDO [1] - 1:5
few [9] - 11:9, 34:9,
38:4, 41:23, 50:1,
62:19, 74:8, 75:9,
76:22
field [13] - 33:24, 65:4,
65:5, 65:9, 66:2,
66:7, 74:14, 74:15,
74:18, 74:19, 74:24,

75:24, 76:24
fields [4] - 65:6, 65:9,
65:24, 76:23
fifth [1] - 42:1
figure [1] - 44:13
filled [2] - 34:11, 60:15
final [5] - 52:8, 52:12,
64:3, 66:21, 68:16
finally [1] - 68:17
Finance [1] - 57:19
financial [2] - 59:14,
60:1
fine [6] - 29:18, 30:1,
30:8, 30:9, 37:5,
43:14
finger [1] - 66:22
finish [1] - 26:4
first [42] - 7:8, 7:10,
9:21, 11:14, 11:23,
13:2, 14:10, 16:15,
16:20, 17:11, 21:20,
26:12, 29:5, 30:13,
36:8, 41:23, 42:14,
44:19, 45:2, 45:4,
46:16, 46:18, 47:1,
47:18, 48:4, 48:15,
48:24, 49:17, 54:25,
62:19, 62:22, 62:25,
65:2, 65:3, 65:7,
65:24, 69:3, 73:14,
74:10, 75:24, 77:22
FISCHER [1] - 2:10
five [3] - 17:16, 41:14,
74:15
flip [2] - 63:14, 64:1
focus [3] - 17:10,
22:12, 24:23
follow [2] - 54:20,
55:19
follow-up [1] - 54:20
followed [1] - 41:22
following [1] - 64:13
following... [1] - 24:20
font [1] - 67:4
FOR [3] - 78:10,
78:11, 78:18
FOREGOING [1] -
78:13
forgetting [1] - 69:5
form [5] - 69:1, 76:9,
76:13, 76:15, 76:19
FORMAT [1] - 78:16
former [1] - 66:7
forms [1] - 77:11
Forms [1] - 77:12
forums [1] - 30:23
forward [3] - 40:13,
40:15, 44:12
four [5] - 21:24, 24:21,
38:8, 39:2, 53:25
frame [2] - 13:13,
13:18
FRANCISCO [1] - 2:7
FRANK [2] - 2:5, 3:13
Frank [1] - 6:11

Frederick [1] - 34:18
free [13] - 8:16, 24:16,
25:24, 26:23, 34:22,
35:10, 35:17, 36:3,
52:11, 53:11, 56:22,
57:15, 57:24
frequented [3] -
39:10, 42:7, 49:24
front [9] - 25:20, 59:3,
71:6, 71:9, 71:12,
71:13, 72:19, 74:3,
77:3
full [1] - 7:22
function [1] - 50:6
funnel [1] - 23:4
FURTHER [2] - 3:12,
55:22

G

Galaxy [2] - 75:7
geared [1] - 23:4
generate [1] - 30:22
generated [2] - 41:16,
45:17
given [2] - 9:14, 76:3
GOODWIN [1] - 2:19
great [1] - 43:22
GROUP [1] - 2:9
Guardian [5] - 30:24,
38:9, 56:9, 56:12,
56:15
guess [3] - 18:1,
53:14, 54:3
guys [1] - 77:20

H

Hall [1] - 6:12
HALL [3] - 2:4, 2:5,
6:12
hand [1] - 29:24
handed [1] - 74:4
handshake [3] -
10:24, 39:13, 55:10
hard [2] - 18:4, 18:5
hard-code [1] - 18:4
hard-coded [1] - 18:5
harvested [2] - 19:5,
20:5
harvesting [3] - 18:19,
18:20, 19:3
heard [2] - 10:6, 18:19
HEARING [1] - 1:16
hearing [2] - 6:22,
6:24
HEDIN [40] - 2:4, 2:5,
3:13, 6:10, 12:15,
15:22, 16:3, 24:11,
29:14, 29:19, 29:22,
32:12, 32:22, 37:10,
38:11, 38:15, 39:7,
39:8, 39:15, 43:12,
43:15, 43:21, 44:7,

44:16, 44:23, 45:1,
47:14, 47:17, 47:20, 82
47:23, 49:23, 50:19,
52:17, 54:19, 54:23,
55:13, 55:17, 58:5,
62:11, 73:8
Hedin [1] - 6:11
HELD [1] - 78:15
held [1] - 8:23
help [2] - 21:3, 56:4
helps [2] - 56:12,
56:18
HEREBY [1] - 78:12
hereto [8] - 15:24,
16:5, 24:13, 30:10,
30:11, 33:4, 62:13,
73:10
high [4] - 9:17, 28:21,
71:5, 77:13
Hill [5] - 6:5, 15:6,
34:4, 60:7, 73:20
hill [50] - 16:12, 17:8,
17:11, 17:21, 17:23,
18:3, 18:14, 20:19,
20:22, 21:17, 22:4,
22:15, 23:9, 23:20,
24:7, 25:5, 26:6,
26:13, 26:19, 27:1,
27:18, 33:23, 34:14,
34:19, 35:10, 35:15,
35:18, 36:1, 37:19,
39:10, 41:16, 42:7,
46:8, 46:20, 47:7,
48:7, 48:22, 52:9,
60:10, 60:12, 60:13,
60:15, 60:24, 61:1,
61:22, 66:15, 70:16,
72:19, 73:3, 75:6
HILL [3] - 1:7, 2:4,
78:5
Hill's [2] - 18:18, 36:15
hill's [7] - 15:11, 16:9,
27:8, 33:12, 35:1,
70:18, 74:23
history [1] - 30:19
hit [2] - 35:4, 65:1
hits [3] - 14:18, 72:10,
72:11
Holdings [1] - 9:5
home [2] - 11:12,
18:12
Honor [33] - 6:10,
6:15, 6:18, 6:25, 7:9,
12:12, 12:15, 15:20,
15:22, 15:25, 24:9,
24:11, 29:10, 29:14,
30:2, 32:9, 32:12,
33:5, 36:11, 37:7,
39:4, 43:10, 43:12,
43:21, 44:7, 52:14,
52:15, 52:17, 54:19,
55:20, 58:5, 62:9,
73:6
HONORABLE [1] - 1:5
host [3] - 28:25,
38:18, 38:20

hour ^[1] - 77:22 HTC ^[1] - 21:13 hyperlink ^[5] - 25:3, 48:15, 48:17, 67:8, 67:21	60:19, 61:3, 64:6, 66:12, 66:14, 66:15, 66:17, 68:18, 70:18, 71:3, 71:11, 71:20, 71:25, 72:8, 72:12, 73:4, 73:16, 73:25, 74:20, 75:18	#876 job ^[3] - 8:8, 38:22 Jornaya ^[41] - 28:13, 28:16, 28:24, 29:4, 29:7, 29:9, 29:12, 30:3, 30:15, 30:17, 32:1, 32:11, 36:19, 37:15, 37:16, 38:17, 38:18, 38:24, 39:3, 39:16, 40:24, 42:7, 42:10, 42:17, 43:8, 50:24, 50:25, 51:9, 51:12, 51:16, 51:20, 54:9, 54:14, 56:1, 56:4, 57:25, 68:24, 68:25, 76:4, 76:9, 76:10 Jornaya's ^[4] - 31:14, 38:9, 52:5, 52:12 JUDGE ^[1] - 1:5 judge ^[1] - 56:20 JUDICIAL ^[2] - 78:17, 78:20	11:9, 11:14, 11:19, 12:1, 12:3, 14:9, 31:21, 50:2, 56:3, 60:16, 60:17, 60:23, 65:8, 65:25, 73:14 late ^[1] - 44:12 latter ^[1] - 17:14 LAW ^[1] - 2:9 lawyers ^[1] - 44:2 lead ^[16] - 21:25, 27:24, 30:19, 31:3, 31:4, 31:12, 39:23, 41:15, 42:6, 42:18, 45:17, 54:1, 68:24, 75:25, 76:3, 76:11 leads ^[2] - 30:22, 30:23 leave ^[2] - 43:25, 44:1 led ^[1] - 70:24 lenders ^[12] - 8:14, 9:13, 17:9, 19:12, 20:13, 21:18, 27:20, 27:23, 35:16, 35:20, 35:22, 35:23 lending ^[1] - 24:24 less ^[1] - 62:24 LESS ^[1] - 78:18 letters ^[2] - 25:11, 25:12 level ^[4] - 9:18, 28:21, 71:5, 77:13 leveraging ^[1] - 20:12 library ^[1] - 69:19 limited ^[1] - 13:2 line ^[1] - 13:3 lines ^[1] - 75:9 linger ^[1] - 7:18 lingo ^[1] - 22:19 link ^[7] - 31:23, 32:4, 32:7, 42:21, 43:1, 46:10, 67:10 list ^[1] - 13:6 listed ^[1] - 69:2 LLP ^[2] - 2:4, 2:19 LMB ^[60] - 8:4, 8:6, 8:8, 8:16, 8:21, 9:1, 9:6, 9:13, 9:20, 10:19, 10:24, 11:16, 11:25, 12:7, 14:4, 14:20, 14:25, 15:6, 16:8, 16:9, 16:12, 18:16, 19:2, 19:5, 19:10, 23:7, 24:2, 24:7, 24:24, 26:15, 35:8, 38:16, 39:9, 39:14, 46:9, 47:7, 48:7, 48:10, 48:17, 48:23, 48:25, 50:25, 51:3, 54:25, 55:13, 59:24, 60:20, 60:22, 67:4, 67:12, 67:13, 67:20, 67:21, 67:24, 68:1, 72:13, 75:21, 77:8 LMB's ^[24] - 8:15, 9:8, 9:17, 11:1, 11:20,	13:6, 13:11, 13:25, 14:1, 14:7, 14:12, 15:18, 17:11, 17:12, 22:15, 22:16, 24:4, 25:16, 27:9, 39:5, 52:9, 56:16, 67:8, 70:13 LMB>YourSurvey.info ^[1] - 17:21 lmb>YourVASurvey.info ^[1] - 10:6 LMB>YourVASurvey.info ^[5] - 17:25, 59:16, 60:11, 61:11, 75:15 load ^[2] - 51:3, 51:19 loaded ^[2] - 51:5, 52:5 loads ^[3] - 50:25, 51:15, 52:12 Loan ^[1] - 21:22 loan ^[4] - 18:10, 26:8, 34:12 LOANS ^[3] - 1:12, 2:14, 78:7 Loans ^[9] - 6:5, 6:17, 6:19, 9:2, 9:7, 9:8, 29:8, 38:20, 58:10 loans ^[2] - 19:13, 21:22 locate ^[1] - 43:11 log ^[1] - 62:1 logic ^[1] - 53:7 look ^[13] - 17:16, 20:17, 20:21, 23:1, 25:9, 25:19, 31:2, 39:20, 42:9, 50:5, 50:14, 52:21, 67:14 looked ^[7] - 24:6, 31:17, 42:4, 42:20, 48:20, 50:8, 62:1 looking ^[14] - 9:20, 10:18, 13:18, 26:24, 27:18, 33:10, 33:12, 33:17, 45:2, 46:25, 47:2, 66:20, 66:21, 70:8 looks ^[6] - 27:6, 36:14, 42:19, 50:8, 53:5, 53:6 LOS ^[3] - 1:17, 1:24, 6:1 lower ^[1] - 63:22 LowerMy ^[1] - 44:18 LowerMyBills ^[6] - 9:23, 15:12, 20:12, 49:12, 65:23, 75:22 LowerMyBills.com ^[3] - 13:1, 40:21, 41:6 LRE ^[2] - 17:20, 22:23
I				
ID ^[9] - 31:4, 41:15, 41:25, 42:18, 68:24, 75:25, 76:3, 76:5, 76:11 idea ^[1] - 49:7 identifiable ^[2] - 11:13, 14:10 identifier ^[3] - 28:12, 28:20, 29:8 identify ^[7] - 11:24, 13:5, 15:9, 23:11, 23:16, 29:3, 64:7 image ^[1] - 76:17 immediately ^[2] - 41:22, 75:16 improve ^[1] - 52:24 IN ^[5] - 6:3, 78:10, 78:15, 78:16, 78:19 in-client ^[1] - 20:13 in-market ^[2] - 19:11, 20:14 INC ^[3] - 1:12, 2:14, 78:7 Inc ^[1] - 9:5 inches ^[1] - 21:10 include ^[1] - 32:17 included ^[1] - 32:15 includes ^[2] - 13:2, 69:19 including ^[4] - 25:23, 39:23, 57:20, 68:7 incorporated ^[1] - 29:20 indeed ^[1] - 54:13 indicate ^[7] - 21:20, 23:3, 28:1, 53:21, 66:1, 74:9, 75:17 indicated ^[1] - 35:15 indicates ^[6] - 17:14, 22:18, 22:23, 33:23, 66:2, 74:10 indicators ^[1] - 18:1 indirect ^[3] - 10:1, 10:20, 17:14 individuals ^[1] - 59:13 inferred ^[2] - 53:25, 54:4 information ^[47] - 8:19, 10:23, 11:14, 14:10, 15:13, 15:14, 15:17, 16:8, 18:8, 18:11, 18:13, 18:16, 18:18, 18:23, 19:2, 19:5, 20:5, 20:11, 20:21, 22:14, 26:6, 26:8, 26:13, 26:24, 35:1, 42:6, 60:15,	input ^[1] - 10:22 inputs ^[3] - 14:19, 18:14, 35:7 inputting ^[1] - 18:25 inquiry ^[1] - 28:10 Inquiry ^[2] - 16:15, 16:22 inserts ^[1] - 50:25 instance ^[3] - 18:8, 74:22, 75:14 instances ^[1] - 49:1 interact ^[2] - 9:23, 62:20 interacted ^[1] - 33:23 interacting ^[2] - 20:20, 33:16 interaction ^[39] - 16:20, 16:22, 17:4, 17:10, 18:7, 20:23, 21:19, 22:6, 22:13, 22:18, 23:3, 23:6, 23:12, 24:1, 26:4, 26:9, 26:12, 26:25, 27:2, 27:7, 28:13, 31:8, 31:9, 32:2, 34:4, 34:14, 37:19, 39:18, 42:16, 44:18, 45:10, 48:24, 49:8, 49:20, 51:17, 52:9, 56:11, 56:18, 77:16 interactions ^[10] - 15:5, 15:11, 15:16, 16:9, 16:12, 16:25, 28:17, 31:6, 40:10, 45:15 interacts ^[2] - 63:16, 64:25 internal ^[2] - 17:18, 22:19 Internet ^[3] - 8:17, 10:21, 18:23 interpret ^[1] - 21:3 interpreter ^[1] - 44:11 invisible ^[1] - 33:18 IOS ^[2] - 68:12, 70:4 IP ^[7] - 20:18, 20:19, 31:10, 42:19, 74:16, 74:19 IS ^[2] - 78:13, 78:16 item ^[2] - 6:4, 24:23 items ^[2] - 24:21, 57:7 itself ^[1] - 71:21	K KAZEROUNI ^[1] - 2:9 Kazerounian ^[1] - 6:9 KAZEROUNIAN ^[2] - 2:10, 6:8 keep ^[2] - 37:3, 56:4 keeps ^[1] - 51:25 kept ^[1] - 72:24 key ^[2] - 53:13, 71:8 keyboard ^[1] - 63:24 keys ^[1] - 71:9 kind ^[9] - 12:8, 19:1, 43:8, 49:21, 50:13, 50:14, 53:7, 54:2, 55:9 knowledge ^[1] - 39:19 knows ^[1] - 71:10 Kyle ^[1] - 6:19 KYLE ^[1] - 2:20 L LA ^[1] - 17:24 landing ^[8] - 23:21, 23:23, 24:3, 25:23, 26:18, 26:21, 27:13, 31:17 language ^[20] - 24:18, 35:21, 39:24, 56:14, 60:18, 60:21, 60:22, 64:4, 64:8, 65:12, 65:13, 65:22, 66:24, 67:3, 67:15, 70:9, 70:13, 70:14, 75:22 laptop ^[1] - 27:16 Larry ^[2] - 58:10, 58:14 LARRY ^[3] - 3:14, 58:11, 58:14 last ^[17] - 7:24, 11:8,	11:9, 11:14, 11:19, 12:1, 12:3, 14:9, 31:21, 50:2, 56:3, 60:16, 60:17, 60:23, 65:8, 65:25, 73:14 late ^[1] - 44:12 latter ^[1] - 17:14 LAW ^[1] - 2:9 lawyers ^[1] - 44:2 lead ^[16] - 21:25, 27:24, 30:19, 31:3, 31:4, 31:12, 39:23, 41:15, 42:6, 42:18, 45:17, 54:1, 68:24, 75:25, 76:3, 76:11 leads ^[2] - 30:22, 30:23 leave ^[2] - 43:25, 44:1 led ^[1] - 70:24 lenders ^[12] - 8:14, 9:13, 17:9, 19:12, 20:13, 21:18, 27:20, 27:23, 35:16, 35:20, 35:22, 35:23 lending ^[1] - 24:24 less ^[1] - 62:24 LESS ^[1] - 78:18 letters ^[2] - 25:11, 25:12 level ^[4] - 9:18, 28:21, 71:5, 77:13 leveraging ^[1] - 20:12 library ^[1] - 69:19 limited ^[1] - 13:2 line ^[1] - 13:3 lines ^[1] - 75:9 linger ^[1] - 7:18 lingo ^[1] - 22:19 link ^[7] - 31:23, 32:4, 32:7, 42:21, 43:1, 46:10, 67:10 list ^[1] - 13:6 listed ^[1] - 69:2 LLP ^[2] - 2:4, 2:19 LMB ^[60] - 8:4, 8:6, 8:8, 8:16, 8:21, 9:1, 9:6, 9:13, 9:20, 10:19, 10:24, 11:16, 11:25, 12:7, 14:4, 14:20, 14:25, 15:6, 16:8, 16:9, 16:12, 18:16, 19:2, 19:5, 19:10, 23:7, 24:2, 24:7, 24:24, 26:15, 35:8, 38:16, 39:9, 39:14, 46:9, 47:7, 48:7, 48:10, 48:17, 48:23, 48:25, 50:25, 51:3, 54:25, 55:13, 59:24, 60:20, 60:22, 67:4, 67:12, 67:13, 67:20, 67:21, 67:24, 68:1, 72:13, 75:21, 77:8 LMB's ^[24] - 8:15, 9:8, 9:17, 11:1, 11:20,	13:6, 13:11, 13:25, 14:1, 14:7, 14:12, 15:18, 17:11, 17:12, 22:15, 22:16, 24:4, 25:16, 27:9, 39:5, 52:9, 56:16, 67:8, 70:13 LMB>YourSurvey.info ^[1] - 17:21 lmb>YourVASurvey.info ^[1] - 10:6 LMB>YourVASurvey.info ^[5] - 17:25, 59:16, 60:11, 61:11, 75:15 load ^[2] - 51:3, 51:19 loaded ^[2] - 51:5, 52:5 loads ^[3] - 50:25, 51:15, 52:12 Loan ^[1] - 21:22 loan ^[4] - 18:10, 26:8, 34:12 LOANS ^[3] - 1:12, 2:14, 78:7 Loans ^[9] - 6:5, 6:17, 6:19, 9:2, 9:7, 9:8, 29:8, 38:20, 58:10 loans ^[2] - 19:13, 21:22 locate ^[1] - 43:11 log ^[1] - 62:1 logic ^[1] - 53:7 look ^[13] - 17:16, 20:17, 20:21, 23:1, 25:9, 25:19, 31:2, 39:20, 42:9, 50:5, 50:14, 52:21, 67:14 looked ^[7] - 24:6, 31:17, 42:4, 42:20, 48:20, 50:8, 62:1 looking ^[14] - 9:20, 10:18, 13:18, 26:24, 27:18, 33:10, 33:12, 33:17, 45:2, 46:25, 47:2, 66:20, 66:21, 70:8 looks ^[6] - 27:6, 36:14, 42:19, 50:8, 53:5, 53:6 LOS ^[3] - 1:17, 1:24, 6:1 lower ^[1] - 63:22 LowerMy ^[1] - 44:18 LowerMyBills ^[6] - 9:23, 15:12, 20:12, 49:12, 65:23, 75:22 LowerMyBills.com ^[3] - 13:1, 40:21, 41:6 LRE ^[2] - 17:20, 22:23
	J			M
JEFFREY ^[2] - 2:15, 3:11 Jeffrey ^[1] - 6:16				machine ^[1] - 21:4 mail ^[5] - 11:14, 19:24, 63:14, 63:19, 73:15

<p>maintained [5] - 12:10, 13:10, 15:17, 24:3, 62:6</p> <p>maintenance [1] - 8:12</p> <p>managing [1] - 8:14</p> <p>Manny [2] - 30:4, 37:25</p> <p>manufacturer [1] - 21:12</p> <p>March [1] - 12:2</p> <p>MARIA [3] - 1:21, 78:10, 78:23</p> <p>mark [2] - 40:18, 40:20</p> <p>MARKED [2] - 4:3, 5:3</p> <p>marked [2] - 37:25, 46:23</p> <p>market [3] - 19:11, 19:14, 20:14</p> <p>marketing [3] - 20:10, 23:2, 23:13</p> <p>marry [1] - 24:1</p> <p>match [10] - 8:19, 9:11, 9:25, 10:25, 17:7, 28:1, 28:20, 31:16, 49:1, 49:6</p> <p>matched [11] - 16:19, 21:18, 21:23, 22:2, 23:6, 27:19, 27:24, 35:15, 35:22, 49:12, 57:2</p> <p>matching [20] - 8:16, 9:17, 9:24, 10:4, 14:4, 14:5, 14:21, 15:6, 15:12, 15:16, 19:10, 19:11, 20:12, 35:6, 35:8, 53:8, 56:24, 57:7, 57:9</p> <p>MATTER [1] - 78:15</p> <p>matter [7] - 43:17, 43:23, 43:25, 44:1, 44:5, 60:7, 77:20</p> <p>mean [14] - 12:2, 18:22, 24:25, 28:5, 31:25, 44:4, 49:16, 53:5, 59:4, 60:21, 65:6, 71:12, 75:20, 76:6</p> <p>meaning [1] - 49:9</p> <p>means [5] - 17:18, 27:13, 46:4, 57:20, 76:7</p> <p>meet [2] - 31:1, 76:10</p> <p>mention [2] - 20:3, 69:12</p> <p>mentioned [2] - 77:11, 77:12</p> <p>MESA [1] - 2:11</p> <p>message [9] - 23:9, 23:14, 23:21, 46:10, 48:4, 48:7, 48:15, 48:21</p> <p>messages [2] - 23:1, 47:6</p> <p>messaging [2] - 46:4,</p>	<p>48:12</p> <p>method [4] - 9:22, 10:1, 10:2, 10:20</p> <p>methods [1] - 27:21</p> <p>MI [1] - 2:17</p> <p>middle [1] - 33:21</p> <p>might [2] - 43:19, 53:6</p> <p>military [4] - 63:1, 74:8, 74:12, 74:13</p> <p>mind [2] - 48:11, 62:18</p> <p>minute [7] - 37:18, 40:18, 41:13, 43:10, 43:12, 46:18, 53:23</p> <p>minutes [1] - 77:21</p> <p>mixing [1] - 39:5</p> <p>mobile [5] - 34:7, 45:22, 66:23, 68:11, 69:19</p> <p>model [2] - 21:13</p> <p>modified [3] - 76:23, 77:6, 77:7</p> <p>modify [1] - 69:16</p> <p>moment [1] - 25:9</p> <p>Monday [1] - 48:5</p> <p>MONDAY [2] - 1:18, 6:1</p> <p>monthly [1] - 35:2</p> <p>Morgan [1] - 6:16</p> <p>MORGANROTH [44] - 2:14, 2:15, 3:11, 6:15, 6:25, 7:5, 7:9, 7:21, 12:12, 12:17, 15:20, 15:25, 16:6, 24:9, 24:14, 29:10, 29:18, 29:21, 29:23, 30:2, 30:9, 30:12, 32:9, 32:19, 32:25, 33:5, 33:8, 36:5, 36:10, 37:1, 37:3, 37:6, 37:12, 39:4, 47:12, 47:15, 47:19, 47:21, 50:22, 52:3, 52:14, 55:19, 55:23</p> <p>Mortgage [2] - 8:4, 8:6</p> <p>mortgage [42] - 8:14, 8:19, 9:13, 9:20, 10:1, 10:5, 10:17, 10:19, 10:25, 11:13, 13:7, 14:22, 16:19, 17:8, 17:9, 18:12, 19:12, 19:18, 19:23, 20:13, 21:18, 21:23, 22:2, 22:3, 22:5, 22:22, 23:7, 23:13, 26:7, 27:19, 27:23, 28:2, 28:6, 28:7, 28:15, 35:3, 35:9, 35:16, 57:1, 59:13</p> <p>most [6] - 8:18, 11:8, 14:9, 49:25, 50:2, 53:20</p> <p>motion [1] - 7:2</p> <p>move [13] - 12:12, 15:20, 15:25, 22:12, 24:9, 29:10, 29:23,</p>	<p>#877</p> <p>32:9, 33:1, 44:2, 62:9, 65:6, 73:6</p> <p>moves [2] - 65:3, 65:4</p> <p>moving [1] - 44:12</p> <p>MR [90] - 6:8, 6:10, 6:12, 6:15, 6:18, 6:25, 7:5, 7:9, 7:21, 12:12, 12:15, 12:17, 15:20, 15:22, 15:25, 16:3, 16:6, 24:9, 24:11, 24:14, 29:10, 29:14, 29:18, 29:19, 29:21, 29:22, 29:23, 30:2, 30:9, 30:12, 32:9, 32:12, 32:19, 32:22, 32:25, 33:5, 33:8, 36:5, 36:10, 37:1, 37:3, 37:6, 37:10, 37:12, 38:11, 38:15, 39:4, 39:7, 39:8, 39:15, 43:12, 43:15, 43:21, 44:7, 44:16, 44:23, 45:1, 47:12, 47:14, 47:15, 47:17, 47:19, 47:20, 47:21, 47:23, 49:23, 50:19, 50:22, 52:3, 52:14, 52:17, 54:19, 54:23, 55:13, 55:17, 55:19, 55:23, 58:5, 58:10, 58:18, 62:9, 62:11, 62:14, 70:15, 70:22, 73:6, 73:8, 73:11, 77:9, 77:10</p> <p>MS [5] - 6:20, 7:12, 7:17, 30:7, 36:9</p> <p>music [1] - 33:20</p> <p>N</p> <p>name [24] - 7:22, 7:24, 11:14, 18:9, 21:4, 21:15, 26:6, 30:3, 45:25, 58:12, 58:14, 65:2, 65:3, 65:8, 65:25, 73:14, 73:19, 73:25, 75:10</p> <p>Nancy [1] - 6:21</p> <p>nature [1] - 8:15</p> <p>nearly [1] - 77:22</p> <p>need [7] - 26:13, 26:19, 42:9, 43:16, 43:19, 48:9, 53:21</p> <p>needed [3] - 34:19, 40:2, 41:1</p> <p>network [11] - 13:2, 13:6, 13:19, 14:1, 14:7, 16:1, 35:20, 67:4, 67:9, 67:13, 67:20</p> <p>neutral [3] - 30:18, 30:24, 56:8</p> <p>never [1] - 66:16</p> <p>new [2] - 30:6, 34:17</p> <p>next [19] - 17:24,</p>	<p>22:23, 29:21, 31:2, 32:20, 36:12, 40:1, 40:25, 42:24, 47:9, 48:1, 48:2, 51:18, 58:9, 63:2, 63:10, 63:21, 64:1, 65:24</p> <p>nine [1] - 18:2</p> <p>NONE [1] - 5:5</p> <p>NORTH [1] - 2:16</p> <p>nothing [5] - 34:1, 50:19, 55:17, 58:5, 66:14</p> <p>notice [1] - 73:14</p> <p>notification [1] - 69:16</p> <p>November [30] - 12:20, 13:14, 13:23, 14:2, 16:23, 17:1, 17:5, 17:6, 22:12, 24:2, 24:7, 25:17, 26:4, 26:9, 26:25, 27:20, 31:7, 31:9, 37:19, 37:21, 37:22, 45:9, 45:14, 45:18, 46:9, 48:18, 48:23, 48:25, 52:9</p> <p>number [12] - 6:4, 11:15, 15:11, 30:6, 45:23, 71:6, 71:8, 73:15, 73:21, 73:22, 73:25</p> <p>Number [9] - 12:25, 27:10, 29:1, 31:18, 32:13, 42:13, 42:14, 45:6, 46:14</p> <p>numbers [1] - 26:5</p> <p>NW [1] - 2:21</p> <p>O</p> <p>objection [10] - 12:14, 12:15, 15:22, 16:3, 24:11, 29:14, 32:12, 39:4, 62:11, 73:8</p> <p>obtain [2] - 71:25, 72:5</p> <p>obtained [2] - 18:18, 74:2</p> <p>obviously [1] - 36:24</p> <p>occasion [1] - 22:15</p> <p>occasions [1] - 46:20</p> <p>occurred [1] - 30:20</p> <p>October [42] - 12:20, 13:14, 13:22, 14:1, 16:17, 16:25, 17:4, 17:5, 17:10, 18:7, 20:23, 21:19, 22:6, 23:6, 26:14, 27:2, 27:7, 31:7, 39:11, 41:16, 42:8, 42:15, 44:18, 45:3, 48:5, 48:25, 49:25, 50:5, 60:25, 61:20, 61:22, 62:4, 64:17, 67:10, 67:24, 68:5, 68:22, 69:10, 71:16, 71:22,</p>	<p>72:6, 73:4</p> <p>OF [10] - 1:2, 1:15, 2:48 4 2:14, 78:11, 78:14, 78:17, 78:20</p> <p>offer [1] - 43:8</p> <p>offers [1] - 76:19</p> <p>officer [3] - 58:24, 58:25, 59:8</p> <p>OFFICIAL [3] - 1:21, 78:10, 78:23</p> <p>often [1] - 49:15</p> <p>OLD [1] - 2:16</p> <p>OLGUIN [1] - 1:5</p> <p>ON [2] - 2:4, 2:14</p> <p>once [7] - 18:15, 18:16, 35:4, 51:20, 65:1, 72:11, 77:3</p> <p>one [50] - 6:4, 9:11, 11:8, 14:5, 16:19, 16:25, 17:8, 22:22, 23:12, 26:16, 27:25, 29:24, 30:14, 34:23, 37:18, 41:3, 41:13, 42:3, 42:22, 43:10, 43:11, 43:12, 45:18, 46:18, 46:24, 47:2, 47:14, 49:8, 49:17, 52:6, 53:20, 53:24, 54:19, 55:8, 61:17, 62:23, 62:24, 67:3, 68:9, 68:23, 68:25, 69:3, 69:20, 70:6, 70:24, 71:6, 71:8</p> <p>online [1] - 8:16</p> <p>open [2] - 25:4, 33:7</p> <p>operates [3] - 53:14, 59:12, 59:21</p> <p>operating [2] - 21:16, 75:1</p> <p>opposed [1] - 56:15</p> <p>optimization [2] - 8:13, 38:23</p> <p>option [1] - 40:15</p> <p>order [6] - 40:9, 49:6, 51:8, 51:20, 59:25, 71:10</p> <p>ordinary [4] - 15:17, 24:4, 62:7, 72:25</p> <p>origin [1] - 30:19</p> <p>OS [2] - 21:15, 75:5</p> <p>outcomes [1] - 20:15</p> <p>outreach [1] - 19:24</p> <p>own [1] - 30:23</p> <p>owned [1] - 10:10</p> <p>owns [1] - 59:12</p> <p>P</p> <p>p.m [2] - 16:17, 16:23</p> <p>P.M [1] - 6:3</p> <p>Pacific [2] - 16:17, 16:23</p> <p>PAGE [2] - 3:4, 78:16</p> <p>page [104] - 16:15, 16:20, 23:22, 23:23,</p>
--	--	--	--	--

<p>24:3, 24:6, 25:10, 25:23, 26:19, 26:21, 27:13, 28:23, 28:24, 29:4, 29:5, 30:13, 30:14, 31:2, 31:17, 31:20, 31:21, 34:17, 34:24, 34:25, 35:5, 35:11, 36:7, 36:8, 36:12, 39:25, 40:1, 40:3, 40:9, 40:21, 40:25, 41:1, 41:5, 42:1, 42:2, 42:15, 42:17, 42:24, 45:4, 45:8, 45:11, 45:12, 45:13, 45:14, 47:1, 47:10, 47:15, 47:24, 48:1, 48:2, 48:17, 51:3, 51:4, 51:6, 51:14, 51:15, 51:17, 51:18, 51:19, 51:23, 52:8, 52:10, 52:12, 54:25, 56:3, 58:1, 60:16, 60:17, 60:23, 62:3, 62:22, 62:23, 62:25, 63:4, 63:7, 63:11, 63:14, 63:16, 63:18, 63:21, 64:1, 64:2, 64:3, 64:17, 64:22, 64:25, 65:1, 65:17, 65:19, 66:12, 66:15, 66:19, 67:9, 68:4, 69:10, 74:11, 75:24</p> <p>pages [9] - 11:23, 41:4, 51:1, 52:6, 52:19, 52:21, 52:25, 53:2, 62:19</p> <p>pagination [1] - 47:11</p> <p>pair [1] - 21:21</p> <p>paragraph [16] - 25:12, 30:21, 38:8, 38:12, 38:14, 39:2, 39:21, 41:14, 46:17, 46:18, 47:9, 48:1, 48:2, 56:3, 67:3, 67:14</p> <p>parent [5] - 9:6, 27:22, 28:4, 28:6, 57:3</p> <p>part [17] - 8:18, 14:3, 14:9, 17:21, 19:18, 19:22, 20:1, 30:5, 32:1, 32:10, 34:24, 38:6, 45:25, 46:24, 51:7, 54:8, 55:9</p> <p>particular [3] - 38:7, 38:8, 51:6</p> <p>parties [1] - 32:16</p> <p>partner [5] - 10:9, 13:6, 59:25, 60:19, 77:7</p> <p>partners [2] - 10:2, 16:19</p> <p>party [20] - 10:2, 10:9, 17:13, 17:19, 18:4, 21:3, 28:13, 28:25, 30:18, 30:22, 36:19,</p>	<p>38:17, 54:9, 54:12, 56:8, 56:17, 68:23, 72:1, 76:15, 77:14</p> <p>pass [2] - 14:20, 22:3</p> <p>passed [2] - 18:16, 60:19</p> <p>pause [3] - 34:10, 34:16, 36:10</p> <p>Pause [1] - 38:13</p> <p>pay [1] - 38:19</p> <p>payment [1] - 35:2</p> <p>people [4] - 49:6, 59:14, 59:25, 71:20</p> <p>per [2] - 28:13, 68:15</p> <p>period [2] - 23:8, 68:22</p> <p>permanently [1] - 36:24</p> <p>permission [1] - 43:13</p> <p>person [2] - 53:18, 77:15</p> <p>personally [1] - 11:13</p> <p>pertains [4] - 31:3, 37:18, 41:15, 45:9</p> <p>phone [13] - 11:15, 15:11, 19:24, 21:12, 21:14, 27:17, 34:7, 36:13, 36:15, 65:25, 73:15, 73:21, 73:25</p> <p>pictures [1] - 61:18</p> <p>piece [2] - 51:13, 51:15</p> <p>pieces [2] - 53:9, 73:16</p> <p>Pll [1] - 11:14</p> <p>pixel [4] - 21:13, 61:16, 75:5, 75:7</p> <p>place [2] - 13:9, 56:9</p> <p>places [1] - 9:23</p> <p>plaintiff [5] - 6:9, 6:11, 6:12, 15:5, 60:6</p> <p>Plaintiff [1] - 1:8</p> <p>Plaintiffs [1] - 46:23</p> <p>PLAINTIFF'S [1] - 5:3</p> <p>plaintiffs [8] - 18:17, 29:13, 31:21, 41:20, 42:17, 44:23, 46:13, 50:23</p> <p>PLAINTIFFS [1] - 2:4</p> <p>platform [3] - 22:25, 30:18, 55:11</p> <p>play [7] - 33:6, 37:4, 40:11, 40:19, 42:25, 76:17</p> <p>playback [8] - 31:22, 32:1, 32:10, 33:2, 42:21, 51:7, 52:8, 58:1</p> <p>played [2] - 32:6, 33:7</p> <p>playing [1] - 33:9</p> <p>PLLC [1] - 2:15</p> <p>point [7] - 7:13, 34:2, 50:10, 53:16, 57:7, 63:8, 74:21</p> <p>points [1] - 56:13</p>	<p>policy [2] - 24:24, 25:2</p> <p>position [2] - 8:8, 8:23</p> <p>possible [1] - 22:4</p> <p>potentially [1] - 35:2</p> <p>PPI [1] - 21:10</p> <p>practice [2] - 7:4, 19:9</p> <p>prerecorded [1] - 57:20</p> <p>present [2] - 19:6, 20:6</p> <p>presentation [2] - 23:1, 23:2</p> <p>presented [2] - 39:24, 63:8</p> <p>president [2] - 8:9, 8:24</p> <p>PRESIDING [1] - 1:5</p> <p>press [4] - 40:19, 63:2, 63:10, 63:22</p> <p>pressed [1] - 74:6</p> <p>pressing [1] - 72:7</p> <p>previous [1] - 31:5</p> <p>previously [1] - 42:20</p> <p>primarily [1] - 8:17</p> <p>privacy [2] - 24:24, 25:2</p> <p>proceed [1] - 6:24</p> <p>proceedings [1] - 38:13</p> <p>PROCEEDINGS [2] - 1:15, 78:15</p> <p>process [13] - 14:5, 14:9, 14:17, 15:3, 18:15, 19:23, 28:22, 35:6, 68:14, 68:19, 68:24, 69:18, 71:5</p> <p>PROCTER [1] - 2:19</p> <p>product [5] - 8:9, 35:14, 41:11, 54:9, 76:3</p> <p>products [1] - 8:24</p> <p>profile [2] - 18:11, 26:7</p> <p>program [1] - 46:5</p> <p>progress [1] - 39:25</p> <p>promise [1] - 33:19</p> <p>proprietary [1] - 38:9</p> <p>Prospect [6] - 43:3, 43:5, 43:7, 68:25, 76:21, 77:12</p> <p>provide [3] - 20:2, 30:24, 43:6</p> <p>provided [2] - 60:22, 72:12</p> <p>provider [14] - 13:1, 13:19, 14:1, 14:7, 16:1, 21:21, 27:22, 28:4, 28:6, 28:7, 67:4, 67:8, 67:13, 67:20</p> <p>providers [7] - 22:5, 23:7, 57:3, 57:21, 69:21, 69:22, 72:12</p> <p>provides [3] - 30:17, 32:1, 56:10</p>	<p>prudent [1] - 32:16</p> <p>public [1] - 72:3</p> <p>pulled [4] - 15:10, 23:24, 42:9, 72:23</p> <p>pulling [2] - 18:23, 18:25</p> <p>purchase [1] - 30:22</p> <p>purpose [16] - 10:16, 19:12, 25:22, 26:17, 26:20, 26:21, 33:24, 34:11, 34:15, 34:20, 36:1, 57:12, 57:17, 57:19, 57:24</p> <p>purposes [1] - 59:18</p> <p>PURSUANT [1] - 78:12</p> <p>push [1] - 43:17</p> <p>pushed [1] - 55:5</p> <p>put [12] - 8:18, 14:19, 28:24, 33:20, 36:7, 36:17, 51:14, 52:20, 53:11, 57:11, 76:16, 77:5</p> <p>putting [2] - 19:1, 20:11</p>	<p>5:3</p> <p>received [4] - 60:18, 85:70:18, 72:18, 76:11</p> <p>receives [1] - 71:2</p> <p>receiving [1] - 38:23</p> <p>recent [1] - 11:8</p> <p>recently [2] - 50:1, 50:2</p> <p>recess [7] - 43:18, 43:24, 44:3, 44:4, 44:5, 44:10, 77:19</p> <p>Recess [2] - 44:8, 77:25</p> <p>recognize [1] - 72:15</p> <p>record [14] - 6:7, 7:23, 13:1, 16:11, 18:6, 19:1, 44:9, 56:23, 58:13, 71:15, 72:18, 73:7, 76:25, 77:4</p> <p>recorded [3] - 57:25, 76:25, 77:2</p> <p>recording [1] - 56:21</p> <p>records [1] - 77:16</p> <p>RECROSS [2] - 3:8, 54:22</p> <p>REDIRECT [3] - 3:8, 50:21, 55:22</p> <p>REDUCTION [1] - 78:19</p> <p>reengage [4] - 22:21, 23:13, 49:11, 49:15</p> <p>reengaged [2] - 24:7, 26:14</p> <p>reengaging [1] - 26:11</p> <p>reenter [2] - 26:13, 26:19</p> <p>reentered [1] - 26:16</p> <p>refer [3] - 8:5, 10:11, 59:18</p> <p>reference [3] - 18:10, 28:4, 35:17</p> <p>referenced [3] - 27:10, 31:22, 33:2</p> <p>references [2] - 41:14, 42:15</p> <p>referral [1] - 35:18</p> <p>referred [2] - 45:22, 69:7</p> <p>referring [1] - 64:8</p> <p>refers [1] - 46:4</p> <p>refi [2] - 20:14, 26:17</p> <p>refi'ing [1] - 10:17</p> <p>refinance [15] - 17:20, 19:11, 19:13, 22:24, 23:4, 26:17, 26:22, 33:24, 34:11, 34:15, 34:21, 36:1, 57:12, 57:17, 57:24</p> <p>refinancing [1] - 8:17</p> <p>reflect [9] - 16:7, 17:11, 20:18, 22:14, 74:18, 74:24, 75:12, 76:2, 76:14</p> <p>reflected [3] - 45:4, 54:24, 74:19</p> <p>reflecting [1] - 31:13</p>
Q				
<p>quality [4] - 28:11, 68:14, 69:12, 69:17</p> <p>quarters [1] - 75:23</p> <p>queried [1] - 15:11</p> <p>questions [16] - 9:16, 11:11, 11:12, 15:5, 36:6, 37:8, 38:5, 41:24, 50:24, 52:18, 55:20, 56:20, 58:3, 62:23, 62:24, 63:3</p> <p>QUICKEN [3] - 1:12, 2:14, 78:7</p> <p>Quicken [11] - 6:5, 6:17, 6:19, 9:2, 9:6, 9:8, 21:22, 29:8, 38:20, 55:15, 58:10</p>				
R				
<p>R-I-C-H [1] - 7:25</p> <p>ran [1] - 21:16</p> <p>rather [1] - 18:24</p> <p>re [1] - 49:3</p> <p>reaches [1] - 63:3</p> <p>reactive [1] - 69:5</p> <p>read [4] - 38:11, 38:14, 56:7</p> <p>reading [2] - 33:17, 34:4</p> <p>ready [2] - 6:24, 38:12</p> <p>really [2] - 44:12, 77:20</p> <p>realtime [1] - 42:7</p> <p>receive [4] - 22:10, 32:3, 69:16, 76:5</p> <p>RECEIVED [2] - 4:3,</p>				

<p>reflects [3] - 40:24, 74:25, 75:13</p> <p>regarding [3] - 9:17, 30:25, 38:5</p> <p>regular [2] - 12:10, 13:11</p> <p>regularly [1] - 49:25</p> <p>REGULATIONS [2] - 78:16, 78:20</p> <p>reidentified [1] - 49:10</p> <p>relate [1] - 13:13</p> <p>related [2] - 26:6, 32:20</p> <p>relates [1] - 16:18</p> <p>relating [1] - 16:8</p> <p>relationship [4] - 9:1, 9:4, 10:15, 11:1</p> <p>released [1] - 21:14</p> <p>relying [1] - 56:16</p> <p>remember [1] - 49:19</p> <p>remind [1] - 74:1</p> <p>render [1] - 39:23</p> <p>rendered [3] - 33:12, 34:3, 34:6</p> <p>report [26] - 29:5, 29:6, 29:8, 29:12, 29:16, 30:14, 31:3, 31:8, 32:1, 32:3, 32:14, 32:19, 37:16, 37:18, 37:24, 38:21, 42:3, 42:10, 42:17, 42:20, 44:19, 44:21, 45:2, 45:3, 45:4, 56:1</p> <p>REPORTED [1] - 78:14</p> <p>REPORTER [3] - 1:21, 78:10, 78:23</p> <p>REPORTER'S [1] - 1:15</p> <p>reports [1] - 41:23</p> <p>representative [2] - 30:3, 56:11</p> <p>represents [2] - 17:7</p> <p>request [1] - 29:8</p> <p>required [5] - 26:22, 28:23, 66:2, 68:15, 76:9</p> <p>requirement [2] - 60:23, 70:10</p> <p>requirements [3] - 14:5, 31:1, 69:21</p> <p>requires [1] - 71:6</p> <p>research [1] - 60:10</p> <p>resolution [1] - 21:11</p> <p>resource [1] - 72:3</p> <p>respect [2] - 8:11, 9:10</p> <p>responsibilities [2] - 8:10, 59:1</p> <p>responsible [3] - 8:12, 8:13, 59:2</p> <p>responsive [3] - 23:3, 27:13, 69:7</p> <p>restart [4] - 60:13,</p>	<p>65:17, 70:17, 71:17</p> <p>result [3] - 21:19, 27:20, 35:16</p> <p>resulting [2] - 40:1, 41:1</p> <p>Results [1] - 34:17</p> <p>results [27] - 14:14, 14:16, 14:24, 18:16, 22:7, 24:16, 25:24, 26:23, 34:22, 35:11, 35:17, 36:3, 52:11, 53:12, 56:22, 57:15, 57:25, 60:17, 61:2, 64:4, 64:10, 66:13, 66:16, 70:19, 72:7, 74:5, 77:4</p> <p>retained [1] - 38:16</p> <p>retargeting [2] - 45:18, 49:3</p> <p>retention [14] - 22:20, 23:10, 26:10, 45:20, 45:21, 45:23, 46:4, 46:6, 46:7, 49:4, 49:5, 49:7, 49:11</p> <p>retrieve [3] - 13:17, 23:23, 38:21</p> <p>retrieved [3] - 12:4, 13:8, 39:22</p> <p>review [2] - 38:3, 76:17</p> <p>reviewed [1] - 32:13</p> <p>reviewing [2] - 16:11, 38:6</p> <p>revision [1] - 13:16</p> <p>RHI [1] - 9:5</p> <p>Rich [3] - 7:10, 7:24</p> <p>RICH [2] - 3:10, 7:11</p> <p>rich [19] - 7:22, 9:16, 11:22, 12:18, 13:5, 15:4, 16:7, 21:17, 30:13, 31:2, 31:20, 33:10, 36:5, 37:10, 43:2, 44:17, 50:20, 50:23, 54:24</p> <p>Rock [1] - 9:5</p> <p>round [1] - 26:4</p> <p>route [1] - 23:2</p> <p>row [25] - 16:15, 16:21, 17:16, 17:24, 18:1, 20:17, 21:1, 21:4, 21:21, 21:24, 22:18, 22:25, 26:16, 27:5, 27:21, 27:24, 28:10, 45:23, 46:1, 53:25, 74:8, 74:9, 75:9, 75:16, 76:13</p> <p>Row [1] - 21:15</p> <p>rows [9] - 16:21, 18:8, 18:10, 21:1, 21:20, 26:5, 74:8, 74:15, 76:22</p> <p>RT [2] - 22:20, 46:6</p> <p>RT_TXT [1] - 46:2</p> <p>run [2] - 22:21, 49:11</p> <p>running [2] - 41:3, 74:20</p>	<p>runs [3] - 11:2, 20:3, 38:9</p> <p>S</p> <p>S-M-I-T-H [1] - 58:15</p> <p>sales [2] - 8:9, 8:24</p> <p>Samsung [2] - 75:7</p> <p>SAN [1] - 2:7</p> <p>saw [9] - 18:3, 25:6, 26:18, 31:5, 31:15, 34:7, 40:12, 52:8, 53:3</p> <p>scene's [1] - 35:5</p> <p>scenes [1] - 35:3</p> <p>scrape [2] - 20:7, 71:20</p> <p>scraped [2] - 19:5, 20:4</p> <p>scraping [7] - 18:19, 18:20, 19:3, 19:17, 71:17, 71:20, 71:23</p> <p>screen [33] - 7:12, 7:16, 11:23, 21:10, 25:19, 27:14, 40:16, 40:21, 40:24, 41:6, 46:17, 47:11, 47:24, 47:25, 61:7, 61:18, 64:9, 64:15, 64:21, 65:4, 65:5, 65:7, 65:9, 65:11, 65:12, 65:16, 66:21, 66:22, 66:23, 66:25, 68:16, 70:14, 71:21</p> <p>screen... [1] - 70:6</p> <p>screens [2] - 40:19, 66:8</p> <p>script [1] - 38:10</p> <p>scroll [6] - 35:19, 35:21, 64:21, 65:9, 75:9, 75:23</p> <p>scrolled [2] - 66:22, 66:23</p> <p>scrolling [1] - 76:22</p> <p>scrolls [1] - 65:11</p> <p>searching [1] - 13:18</p> <p>second [16] - 10:1, 16:20, 16:22, 16:25, 24:23, 29:4, 32:14, 37:1, 45:8, 45:14, 45:17, 48:25, 55:9, 56:3, 68:13, 68:25</p> <p>seconds [2] - 34:1, 34:9</p> <p>SECTION [1] - 78:12</p> <p>Section [2] - 25:10, 25:15</p> <p>section [4] - 30:15, 31:11, 33:21, 64:11</p> <p>see [60] - 10:14, 13:4, 14:14, 14:15, 16:16, 16:21, 17:17, 17:24, 18:5, 21:1, 21:4, 21:21, 21:25, 23:24, 24:16, 24:21, 25:1,</p>	<p>25:13, 27:22, 27:24, 30:15, 31:10, 31:23, 33:14, 33:21, 34:10, 34:25, 35:20, 35:22, 37:4, 40:4, 40:19, 47:11, 47:24, 48:3, 48:4, 49:12, 57:21, 61:2, 62:1, 62:25, 64:3, 64:4, 64:9, 65:1, 65:2, 66:4, 66:12, 66:16, 66:23, 67:4, 67:16, 70:19, 72:7, 74:5, 74:16, 75:9, 75:25, 77:4</p> <p>See [3] - 14:24, 22:6, 60:17</p> <p>seeing [9] - 33:11, 61:12, 63:16, 64:2, 64:15, 65:17, 73:2, 73:12, 76:22</p> <p>select [2] - 26:22, 63:2</p> <p>selected [2] - 40:3, 40:16</p> <p>selecting [1] - 57:19</p> <p>selection [1] - 34:12</p> <p>self [2] - 18:11, 26:7</p> <p>self-assessed [1] - 18:11</p> <p>self-assessment [1] - 26:7</p> <p>send [4] - 10:24, 22:25, 48:7, 77:7</p> <p>sends [1] - 23:8</p> <p>senior [2] - 8:9, 8:23</p> <p>sense [1] - 42:11</p> <p>sent [16] - 21:25, 22:5, 23:9, 23:20, 28:1, 28:2, 35:23, 47:7, 48:22, 53:16, 54:3, 54:25, 55:4, 57:2, 72:11, 74:20</p> <p>sentence [1] - 39:20</p> <p>separate [1] - 46:14</p> <p>series [5] - 11:19, 17:17, 21:1, 62:23, 63:3</p> <p>serve [1] - 9:13</p> <p>served [2] - 63:1, 74:11</p> <p>service [14] - 8:16, 13:9, 19:10, 19:15, 20:13, 20:15, 21:3, 28:14, 29:7, 38:19, 43:9, 59:14, 74:8, 74:14</p> <p>services [3] - 9:17, 43:6, 60:1</p> <p>Services [3] - 8:4, 8:6, 38:9</p> <p>SESSION [1] - 6:3</p> <p>set [4] - 27:25, 39:10, 43:17, 61:16</p> <p>several [3] - 11:7, 11:12, 46:20</p> <p>Seyed [1] - 6:8</p> <p>SEYED [1] - 2:9</p>	<p>sheet [1] - 29:3</p> <p>short [2] - 21:2, 46:6 8 6</p> <p>shot [7] - 47:11, 47:24, 47:25, 64:15, 64:21, 65:16, 66:25</p> <p>show [3] - 61:6, 68:10, 72:14</p> <p>showed [1] - 44:11</p> <p>showing [1] - 68:15</p> <p>shown [5] - 34:3, 34:6, 34:17, 75:22, 76:8</p> <p>shows [3] - 32:2, 45:14, 67:21</p> <p>side [1] - 20:16</p> <p>sides [1] - 7:5</p> <p>sign [2] - 24:20, 64:13</p> <p>similar [4] - 42:3, 43:9, 63:18, 67:20</p> <p>simple [1] - 62:25</p> <p>simplicity [2] - 8:5, 10:11</p> <p>simply [1] - 51:22</p> <p>single [1] - 52:5</p> <p>sit [1] - 53:1</p> <p>site [36] - 17:21, 17:23, 17:24, 21:5, 22:25, 28:18, 38:23, 39:3, 39:5, 39:6, 39:10, 39:18, 46:9, 48:22, 48:23, 49:25, 50:4, 61:11, 61:17, 61:23, 62:23, 67:9, 67:12, 67:21, 69:15, 71:7, 71:13, 75:10, 75:13, 75:14, 76:4, 76:18, 77:16</p> <p>sites [5] - 19:1, 62:2, 69:11, 69:18, 76:16</p> <p>sitting [1] - 44:3</p> <p>six [4] - 17:24, 42:17, 47:10, 47:24</p> <p>size [5] - 21:10, 27:14, 27:15, 27:16</p> <p>slipped [1] - 69:8</p> <p>slowly [1] - 56:7</p> <p>small [1] - 61:24</p> <p>Smith [21] - 58:10, 58:14, 58:19, 60:6, 60:12, 61:1, 61:6, 62:15, 63:6, 63:15, 64:1, 64:15, 66:11, 66:20, 68:4, 69:2, 70:16, 72:14, 73:12, 75:6, 77:11</p> <p>SMITH [2] - 3:14, 58:11</p> <p>snippet [1] - 51:13</p> <p>software [6] - 68:23, 68:25, 76:15, 76:20, 77:13, 77:14</p> <p>sometimes [1] - 69:7</p> <p>somewhat [1] - 52:24</p> <p>soon [1] - 77:15</p> <p>sorry [8] - 47:2, 47:20, 56:12, 57:12, 57:18, 68:24, 69:8, 77:12</p>
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<p>sort ^[1] - 53:13 source ^[3] - 22:19, 62:1, 72:6 Source ^[1] - 17:17 specific ^[1] - 54:4 specifically ^[1] - 59:24 spell ^[1] - 58:12 stamp ^[1] - 76:24 standards ^[1] - 76:10 start ^[3] - 7:2, 21:2, 44:5 starting ^[3] - 17:16, 21:1, 22:18 starts ^[1] - 25:12 state ^[6] - 6:6, 7:22, 58:12, 66:3, 66:9, 73:15 statement ^[1] - 31:12 statements ^[1] - 39:1 STATES ^[6] - 1:1, 1:22, 78:11, 78:13, 78:17, 78:20 states ^[1] - 12:1 status ^[7] - 21:25, 22:1, 27:24, 27:25, 34:2, 54:1, 57:2 stayed ^[1] - 53:9 steady ^[1] - 53:9 STENOGRAPHICAL LY ^[1] - 78:14 step ^[6] - 11:19, 14:9, 68:19, 71:5, 71:8 steps ^[1] - 68:6 still ^[2] - 34:3, 69:20 stop ^[2] - 33:20, 49:21 store ^[1] - 12:8 stored ^[1] - 39:21 storing ^[1] - 28:19 Street ^[1] - 34:18 STREET ^[2] - 1:23, 2:21 street ^[2] - 65:25, 66:3 string ^[2] - 17:18, 22:19 stuff ^[2] - 11:15, 44:2 submission ^[2] - 40:4, 68:16 submit ^[2] - 71:10, 75:4 submitted ^[4] - 41:19, 68:18, 73:3, 73:21 subscribe ^[1] - 29:7 subsequent ^[1] - 63:3 subsequently ^[1] - 65:4 substantial ^[1] - 50:12 substantive ^[1] - 50:10 successfully ^[6] - 19:13, 22:2, 22:4, 23:6, 27:19, 28:2 SUCO ^[1] - 17:19 sued ^[1] - 55:15 SUITE ^[3] - 1:23, 2:6, 2:17</p>	<p>SuitedConnector ^[33] - 10:10, 11:1, 11:3, 17:20, 20:3, 20:4, 39:10, 39:12, 55:1, 55:4, 55:11, 55:15, 58:22, 58:23, 58:25, 59:11, 59:12, 59:22, 61:3, 62:7, 65:18, 68:6, 68:20, 69:13, 69:14, 69:23, 70:7, 70:18, 71:23, 71:25, 72:5, 72:24, 74:1 superficial ^[1] - 53:6 survey ^[1] - 10:23 sustainable ^[1] - 19:9 swiped ^[1] - 67:1 SWORN ^[2] - 7:11, 58:11 system ^[10] - 12:7, 13:16, 13:17, 15:10, 15:15, 16:8, 21:16, 60:10, 71:15, 75:1</p> <p style="text-align: center;">T</p> <p>tab ^[4] - 46:16, 46:18, 47:2, 47:14 table ^[1] - 61:16 tag ^[2] - 75:18, 75:21 tapes ^[2] - 36:16, 51:24 target ^[1] - 60:2 TAYMAN ^[13] - 2:20, 3:15, 6:18, 58:10, 58:18, 62:9, 62:14, 70:15, 70:22, 73:6, 73:11, 77:9, 77:10 Tayman ^[1] - 6:19 TCP ^[3] - 56:12, 56:14, 56:15 TCPA ^[31] - 29:5, 30:14, 30:24, 31:11, 38:9, 39:23, 42:3, 56:1, 56:5, 56:9, 56:12, 60:17, 60:21, 60:22, 62:3, 64:4, 64:8, 65:11, 65:13, 65:22, 66:24, 68:8, 68:16, 70:8, 70:13, 72:12, 75:16, 75:18, 75:22, 76:8 TCPA-compliant ^[1] - 56:5 team ^[1] - 68:14 technical ^[2] - 9:18, 28:22 technology ^[17] - 9:25, 30:18, 38:24, 39:3, 39:16, 40:7, 58:24, 58:25, 59:3, 59:7, 68:9, 69:3, 69:4, 69:6, 69:7, 69:9 ten ^[1] - 18:2 term ^[2] - 18:1, 28:9</p>	<p>terms ^[25] - 11:25, 12:4, 12:18, 12:19, 12:22, 13:9, 13:25, 14:7, 14:11, 14:12, 18:19, 24:24, 25:1, 25:5, 25:7, 25:10, 25:15, 34:12, 48:12, 50:7, 56:20, 67:16, 67:21, 67:23, 68:1 test ^[2] - 69:23, 70:1 tested ^[2] - 70:3, 70:4 testified ^[13] - 38:16, 39:9, 45:16, 46:8, 49:2, 49:24, 50:25, 51:23, 54:24, 55:3, 57:13, 70:16, 70:17 testifying ^[1] - 53:12 testimony ^[2] - 54:5, 57:14 testing ^[4] - 52:24, 69:12, 70:7, 70:11 text ^[13] - 19:24, 22:23, 23:1, 23:8, 23:9, 23:14, 23:21, 46:4, 46:7, 46:10, 47:6, 48:7, 48:15 THAT ^[2] - 78:12, 78:15 THE ^[81] - 2:4, 2:14, 6:14, 6:23, 7:1, 7:7, 7:14, 7:18, 12:14, 12:16, 15:23, 16:4, 24:12, 29:17, 30:1, 30:5, 30:8, 32:23, 33:3, 36:7, 36:12, 36:14, 36:16, 36:17, 36:20, 36:22, 36:23, 36:25, 37:2, 37:5, 37:11, 38:14, 43:14, 43:16, 43:23, 44:9, 44:25, 49:15, 49:16, 49:22, 51:11, 51:12, 51:22, 52:1, 52:2, 52:16, 52:18, 52:23, 53:1, 53:4, 53:10, 53:25, 54:2, 54:8, 54:14, 54:17, 54:18, 54:21, 55:16, 55:18, 55:21, 58:4, 58:7, 58:14, 58:16, 62:12, 70:21, 73:9, 77:18, 78:10, 78:11, 78:13, 78:14, 78:15, 78:16, 78:17, 78:19, 78:20 therefore ^[1] - 56:25 they've ^[1] - 52:23 third ^[21] - 10:2, 10:9, 17:13, 17:19, 18:4, 21:3, 28:13, 28:25, 30:18, 30:21, 30:22, 36:18, 38:17, 54:9, 54:12, 56:8, 56:17, 68:23, 72:1, 76:15, 77:14 third-party ^[3] - 10:9, 17:13, 28:25</p>	<p>THIS ^[1] - 78:18 three ^[16] - 8:25, 9:5, 16:18, 17:3, 17:4, 21:22, 22:5, 23:7, 27:22, 35:15, 35:20, 35:22, 35:23, 68:9, 69:2, 75:23 ties ^[1] - 31:4 TITLE ^[1] - 78:13 title ^[4] - 8:8, 8:9, 10:14, 12:1 TO ^[1] - 78:12 today ^[7] - 6:22, 50:5, 50:9, 52:22, 53:1, 54:7, 59:18 together ^[6] - 14:3, 19:1, 28:20, 29:15, 32:18, 39:9 token ^[1] - 76:3 took ^[5] - 44:17, 61:15, 61:18, 64:21, 77:22 top ^[9] - 13:1, 23:16, 30:17, 41:7, 47:25, 48:11, 65:5, 65:10, 73:14 toward ^[2] - 39:20, 40:17 towards ^[3] - 23:4, 65:10, 75:23 track ^[1] - 28:16 tracked ^[1] - 51:6 tracking ^[1] - 28:11 tracks ^[1] - 30:18 transacted ^[2] - 22:22, 49:9 transaction ^[1] - 23:12 TRANSCRIPT ^[4] - 1:15, 78:14, 78:16, 78:18 transferred ^[3] - 14:25, 17:12, 22:16 translated ^[1] - 22:20 TRUE ^[1] - 78:13 trust ^[1] - 56:18 Trusted ^[1] - 77:12 trusted ^[5] - 69:1, 76:13, 76:15, 76:19, 77:11 try ^[3] - 43:20, 52:24, 56:7 trying ^[2] - 43:11, 47:16 turn ^[16] - 11:21, 12:25, 15:7, 23:15, 25:9, 29:1, 29:4, 30:13, 31:20, 44:21, 46:13, 47:9, 55:24, 56:3, 63:4, 66:19 turned ^[2] - 29:12, 33:21 two ^[19] - 9:21, 16:15, 16:24, 17:25, 21:20, 25:10, 31:6, 35:8, 39:13, 41:23, 45:12, 45:13, 55:8, 59:9,</p>	<p>67:14, 68:19, 68:23, 71:5, 71:8 two-step ^[2] - 68:19, 71:5 TXT ^[2] - 22:23, 46:7 type ^[14] - 11:15, 18:10, 20:22, 26:8, 27:1, 63:9, 63:19, 65:2, 65:3, 65:7, 70:3, 74:25, 75:3, 75:16 types ^[3] - 43:6, 48:12, 60:2</p> <p style="text-align: center;">U</p> <p>under ^[4] - 12:1, 25:24, 57:17 underlined ^[3] - 67:4, 67:15, 67:19 underlining ^[1] - 25:1 underlying ^[1] - 53:7 underneath ^[1] - 57:6 unfortunately ^[1] - 46:17 unique ^[3] - 28:12, 28:19, 29:7 UNIT ^[1] - 2:11 UNITED ^[6] - 1:1, 1:22, 78:11, 78:13, 78:17, 78:20 universal ^[4] - 31:4, 41:25, 42:18, 75:25 universally ^[1] - 76:5 unless ^[2] - 7:2, 22:10 up ^[25] - 21:18, 25:4, 27:19, 33:18, 33:20, 39:5, 39:10, 44:11, 46:22, 52:20, 53:11, 54:20, 55:19, 57:11, 64:21, 65:4, 65:6, 65:9, 65:11, 66:23, 67:1, 68:11, 77:20, 77:23 updated ^[3] - 12:1, 12:3, 27:6 upgraded ^[1] - 69:17 URL ^[4] - 48:11, 48:20, 76:13, 76:16 user ^[8] - 36:21, 63:1, 63:8, 63:19, 64:6, 74:24, 74:25, 76:7 uses ^[2] - 14:4, 75:2 utilize ^[1] - 32:17 UVA ^[1] - 10:23</p> <p style="text-align: center;">V</p> <p>VA ^[1] - 10:14 validate ^[3] - 28:16, 68:17, 70:12 validated ^[4] - 51:6, 76:4, 76:6, 76:7 validation ^[2] - 28:14,</p>
--	--	--	--	---

43:9 value [6] - 18:12, 19:18, 20:1, 21:25, 26:22, 40:22 values [1] - 18:5 vendor [1] - 38:17 verbatim [1] - 50:9 verification [5] - 28:14, 30:24, 31:14, 43:9, 54:10 verify [5] - 42:13, 54:12, 56:13, 56:18, 70:12 vernacular [1] - 17:18 version [4] - 12:7, 21:7, 27:6 versioning [1] - 13:16 veterans [5] - 10:15, 10:17, 10:18, 11:10, 60:5 via [3] - 19:24, 24:20, 64:13 vice [2] - 8:9, 8:23 video [18] - 29:20, 32:10, 33:1, 33:2, 33:6, 33:7, 33:9, 40:12, 40:13, 40:18, 41:6, 42:21, 42:25, 51:7, 52:8, 52:20, 76:17, 77:16 videos [1] - 39:17 view [1] - 27:8 viewing [2] - 27:9, 27:15 visibility [3] - 68:21, 70:8, 70:13 visible [2] - 65:14, 68:7 visit [3] - 27:20, 56:10, 60:24 visited [7] - 11:4, 17:11, 22:15, 48:22, 48:23, 60:11, 60:15 visual [1] - 31:22 visually [1] - 39:22 vs [2] - 1:10, 78:6	51:15, 51:18, 52:6, 64:22, 65:19, 68:4, 69:10 website [92] - 8:13, 8:18, 9:24, 10:3, 10:6, 10:9, 10:15, 10:16, 11:4, 11:10, 11:11, 11:16, 12:23, 13:22, 14:1, 14:6, 14:8, 14:13, 14:16, 14:19, 14:23, 14:25, 17:12, 17:13, 18:3, 18:24, 20:3, 20:10, 22:15, 22:16, 22:17, 25:16, 27:9, 27:14, 27:15, 28:25, 30:23, 32:2, 32:20, 33:11, 33:16, 33:18, 34:2, 34:4, 34:20, 36:17, 37:20, 38:19, 39:14, 42:8, 44:19, 45:25, 50:25, 52:4, 56:9, 56:11, 59:5, 59:15, 59:21, 59:23, 59:24, 60:2, 60:11, 60:14, 60:15, 60:16, 60:24, 61:2, 61:21, 62:6, 62:16, 62:20, 62:21, 64:3, 67:24, 68:5, 68:6, 68:21, 69:24, 71:1, 71:2, 71:3, 71:16, 71:22, 72:6, 73:18, 74:3, 74:10, 75:19, 75:22 websites [5] - 18:24, 39:13, 40:7, 59:13, 68:10 Welcome [1] - 23:16 WEST [1] - 1:23 WESTERN [1] - 1:3 white [1] - 46:15 whole [2] - 53:13, 65:7 WILLIAM [3] - 2:5, 2:20, 3:15 window [1] - 25:4 windows [1] - 69:19 Windows [1] - 70:5 Wiseman [1] - 62:6 WITH [2] - 78:16, 78:19 witness [8] - 7:8, 7:10, 32:21, 56:8, 58:7, 58:9, 77:21, 77:22 WITNESS [19] - 7:11, 36:14, 36:17, 36:22, 36:25, 38:14, 44:25, 49:16, 51:12, 52:1, 52:23, 53:4, 53:25, 54:8, 54:17, 55:16, 58:11, 58:14, 70:21 witnessed [1] - 31:12 WITNESSES [1] - 3:8 witnesses [2] - 7:3, 7:6 wont' [1] - 44:4 WOODARD [1] - 2:16	word [1] - 56:16 works [10] - 26:21, 38:24, 39:3, 39:9, 40:7, 51:18, 54:11, 62:20, 69:13, 71:4 wrap [2] - 77:20, 77:23 write [1] - 10:23 writing [1] - 19:12
Y		
year [2] - 21:13, 61:20 years [4] - 8:22, 8:25, 9:5, 59:9 YourVA [5] - 15:3, 48:25, 60:24, 61:22, 71:16 YourVASurvey [25] - 10:12, 10:18, 10:21, 10:22, 11:2, 11:19, 13:25, 14:4, 14:17, 14:18, 14:25, 18:14, 20:4, 20:10, 20:20, 22:7, 22:10, 39:5, 49:25, 52:4, 52:11, 55:2, 59:19, 62:16, 71:22 YourVASurvey's [10] - 11:4, 11:10, 11:16, 12:22, 13:22, 14:8, 14:13, 14:16, 14:23, 32:20 YourVASurvey.info [6] - 37:20, 39:3, 42:8, 44:19, 48:22, 50:4		
Z		
zip [8] - 63:5, 63:8, 63:9, 63:12, 63:18, 66:4, 66:7, 73:15		

W